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AN ESSAY
ON
BY LAWS :

With an Appendix

CONTAINING

MODEL BY LAWS ISSUED BY THE BOARD OF TRADE,
THE EDUCATION DEPARTMENT,
AND THE LOCAL GOVERNMENT BOARD.

BY

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COUNSEL TO THE LOCAL GOVERNMENT BOARD
AND THE EDUCATION DEPARTMENT.



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CONTENTS.

INTRODUCTION	PAGE vii
----------------------	-------------

CHAPTER I.

THE DEFINITION	1
------------------------	---

CHAPTER II.

THE AUTHORITY FOR MAKING THE BY LAW.. .. .	7
1. By Implication	7
2. By Charter.. .. .	13
3. By Statute	15
4. By Custom.. .. .	55
Repeal, Revocation, and Alteration	60
Obligation on Strangers	66

CHAPTER III.

THE MAKING OF THE BY LAW	75
----------------------------------	----

CHAPTER IV.

THE PROPERTIES OF BY LAWS.. .. .	85
1. Consistent with General Law.. .. .	87
2. An addition to the General Law	89
3. Not to provide beyond the Law	91
4. Certain	93
5. General, not Particular	99
6. Reasonable	101
Herein of restraint and regulations of trade ..	120

	PAGE
THE PROPERTIES OF BY LAWS— <i>continued.</i>	
7. Positive	147
8. Not <i>Ultra Vires</i>	148
Partial invalidity	156
CHAPTER V.	
THE CONFIRMATION OF BY LAWS	160
CHAPTER VI.	
THE PUBLICATION OF BY LAWS	186
CHAPTER VII.	
ENFORCING THE BY LAW	197
1. Disqualification and Amotion, or Expulsion	198
2. Oath	201
3. Bond	203
4. The act of the Governing Body	203
5. Avoidance of the act done	207
6. Dealing with a Licence	208
7. Arrest and Imprisonment	210
8. Distress	214
9. Pecuniary Penalty	217
Recoverable by Action	217
" under Statutes	231
10. Injunction	248
CHAPTER VIII.	
EVIDENCE	251
CHAPTER IX.	
CONSTRUCTION	268
—	
ADDENDUM	279

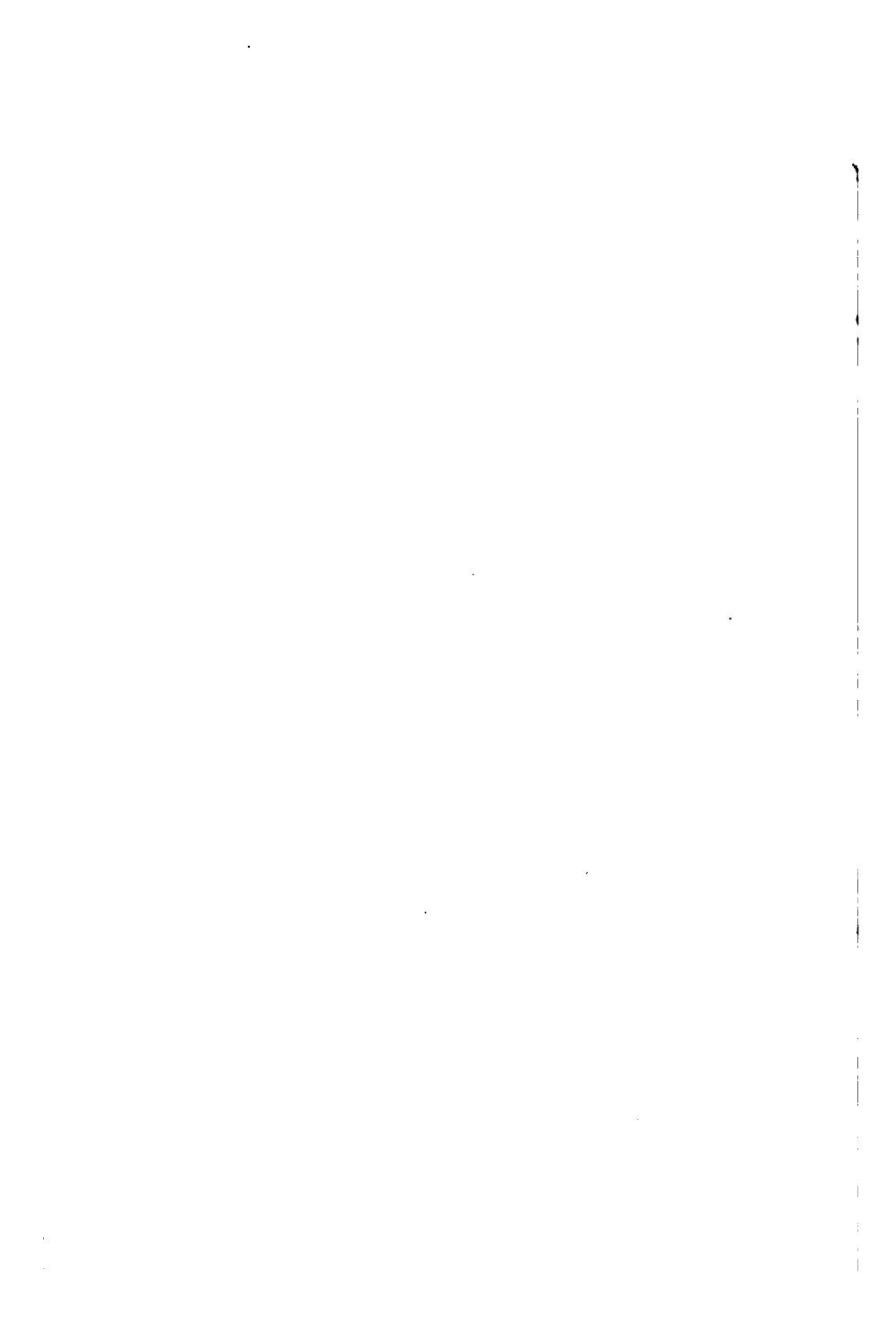
CONTENTS.

v

APPENDIX.

MODEL BY LAWS.

	PAGE
I. BY THE BOARD OF TRADE.	
For Railways	289
For Tramways	294
II. BY THE EDUCATION DEPARTMENT.	
For Attendance at School	297
Instructions of the Department	299
III. BY THE LOCAL GOVERNMENT BOARD.	
1. For Public Baths	302
2. For Public Wash Houses	305
3. For Public Bathing	308
4. For Open Bathing Places	314
5. For Hackney Carriages	315
6. For Markets	326
7. For Hop-picking	333
8. For Cleansing Footways, Houses, and Privies	335
9. For Nuisances	336
10. For New Streets and Buildings	341
11. For Common Lodging Houses	385
12. For Slaughter Houses	395
Instructions of the Board	405
INDEX OF STATUTES	407
INDEX OF CASES	409
GENERAL INDEX	414



INTRODUCTION.

WHEN the Local Government Board was established by a transfer of powers and duties to the Poor Law Board, one of the functions so transferred was the supervision and sanction of the By Laws made by Sanitary Authorities; and I had to give my attention to this special subject so far as the legal requirements were involved. I was unable to find any modern treatise on this subject of a general character that afforded any adequate assistance, and had to resort to the Digests and Abridgments of former days for principles and rules. These were, of course, very deficient, particularly in reference to the subjects of By Laws which have been in great use during recent times.

I have therefore devoted the small amount of time at my disposal to the collecting together and arranging under distinct heads the various decisions, as well as the statutory provisions which are to be found in the Reports and in the Statute Book on the subject of By Laws.

I have framed an Essay on this topic. I believe that the collection will prove useful to the profession, and to many persons who may be called upon either

to frame By Laws, or to enforce their execution. It will be seen that a very extensive range of subjects is brought within the operation of these local and limited rules, and every year adds to their gravity and importance.

I claim no great merit for my work; I have used my endeavours to make it as complete as practicable, but feel that I may have perhaps omitted matters which more protracted research would have supplied. Still what is here offered to the public may be of avail as far as it goes.

I refer to Comyns' Dig. "By Laws," and to Viner's and Bacon's Abridgments under the same title, as great authorities for the ancient part of the law applicable to this subject.

In Kyd upon Corporations, Vol. ii., there is an able and well compiled chapter upon By Laws; but as the work was published at the end of the last century it is not practically of much use at the present day. It contains, moreover, very lengthened discussions upon points which have been rendered immaterial by the modern Municipal Corporation Acts.

There is also a Chapter upon the same subject in the more recent work of Mr. Grant upon Corporations, and I owe much to his Treatise. It is not, however, of such a general and miscellaneous character as that which the subject has assumed under my enquiry.

It has appeared to me that this subject may be treated under the following heads:—

1. The Definition of a By Law.
2. The Authority for its enactment.

3. How it is to be made.
4. Its Properties.
5. Its Confirmation.
6. Its Publication.
7. How it is to be enforced.
8. The evidence required for its enforcement.
9. The construction which has been given by the Courts to By Laws.

I have accordingly divided the Essay into nine Chapters, though it will be seen that they are severally of very disproportionate extent.

W. G. LUMLEY.

Sept. 4, 1875.

I had prepared this work for publication soon after the passing of the Sanitary Act of 1875. But as I proposed to supply official model forms of By Laws, I have been prevented from executing my proposal by the delay which has attended the settling of the model forms of Sanitary By Laws. Consequently I found it necessary to supply an "Addendum" to the body of the work, to contain the provisions which the Legislature have made since the above date in regard to By Laws to be established partly in respect of new subjects, and partly in reference to previously existing powers. I have also been able to add some decisions of the Courts of Law upon the subject of By Laws, pronounced during the interval above referred to.

I take this opportunity of noting two points of

interest in regard to the Properties of By Laws. I have stated the general proposition that a By Law should not be repugnant to the general law, and have referred to the case of *Edmonds*, App., *The Watermen's Company*, Resp. I should also have referred to the case of *Dearden v. Townsend*, L.R. 1 Q.B. 10, as affording a farther illustration. The Statute 8 & 9 Vict. cap. 20, sect. 103, makes it illegal for a person to travel on a railway without having paid his fare, *with intent to evade payment of it*. Hence the Court of Queen's Bench held that a By Law made by a Railway Company requiring a passenger to show a ticket and give it up whenever demanded under a penalty, if meant to apply to a person who had no fraudulent intent to evade payment, would be illegal as altering the general enactment by leaving out the important ingredient of *the fraudulent intent*, and thus making a provision repugnant to the general statute.

I have also stated that a By Law must be *certain* in regard to *the penalty*, and have referred to a judgment of Lush, J., in the case of *Hall v. Nixon*. I should now notice the case of *Brown v. Great Eastern Railway*, L.R. 2 Q.B. 409, where the same learned Judge points out that the penalty need not be expressed *specifically*, but would be sufficient if it could be rendered certain by reference to some standard. He seems to have considered that a liability to pay *a reasonable* sum of money would suffice. It was not necessary that the Court should pronounce any decision on this point, which I think requires farther consideration.

I have to express my regret for the inaccuracy in

the heading of the pages from 142 to 159, and for the following *corrigenda* and *notanda*.

- In page 11, line 21, for "*Hodgkinson*" read "*Hopkinson*."
 „ 43, line 3, for "cap. 100" read "cap. 104."
 „ 101, line 9, for "L.J." read "L.T."
 „ 112, line 13, for "3 E. & G." read "3 E. & B."
 „ 141, line 10, for "*Bowmer*" read "*Bonner*."
 „ 147, the heading should be "Positive."
 „ 149—55, it should be "Not *Ultra Vires*."
 „ 157, it should be "Partial Invalidity."
 „ 159, it should be "Excess in Penalty."
 „ 163, line 33, for "by" read "under."
 „ 171, line 27, for "cap. 118" insert "113."
 „ 181, refer to page 299 in the Appendix.
 „ 184, refer to page 405 in the Appendix.
 „ 232, line 14, omit "9 & 10 Vict. cap. 74, sect. 34," and
 in line 15, insert "16 & 17 Vict. cap. 41, sect. 11."
 „ 240, line 14, for "64" read "61."

In conclusion, I must remark that I have throughout the work adopted the ancient and the legal orthography of *By Law* instead of *Byelaw*. The etymology of the term, and the usage of the principal legal authorities, support this mode of spelling, and modern usage is divided upon the point.

W. G. LUMLEY.

Aug. 1, 1877.

ESSAY ON BY LAWS.

CHAPTER I.

THE DEFINITION.

I HAVE in the first place to consider what a By Law is, and how it is to be defined. Definition.

Now in Bacon's Abridgement, under the title "By Law," I find this definition.

"A By Law is a private law made by those who are duly authorized thereunto *by Charter, Prescription or Custom*, for the conservation of order and good government within some particular place or jurisdiction." This passage, with the exception of the words in italics, is taken from Skinner's argument in *Robinson v. Watkins*.—Skin. R. 375.

But this definition is too narrow as regards both the authority under which By Laws are now made and the objects of such laws.

In Tomlins' Law Dict. "By Laws," an etymology is given which is extracted from *Les Termes de la Ley*, verb. "*By Laws*," and then there is this definition: "Certain orders and constitutions of Corporations for the governing of their members, of Courts Leet and Court Baron, commoners or inhabitants in vills, &c., made by common assent for the good of those that made them, in particular cases whereunto the public law doth not extend, so that they lay restrictions on the parties not imposed by the common or Statute law. Guilds and fraternities of trades by

letters patent of Incorporation may likewise make By Laws for the better regulation of trade among themselves or with others."

This is only an amplification of the definition in *Les Termes de la Ley*,¹ and is not sufficiently comprehensive for the present understanding of the term.

Mr. Grant, in his recent work on Corporations, p. 79, gives the following definition, but he points mainly to Corporations, and sets out too much of the properties of the By Law.

"A By Law is a rule obligatory on a body of persons or over a particular district, not being at variance with the general laws of the realm, and being reasonable and adapted to the purposes of the Corporation, and any rule or ordinance of a permanent character which a Corporation is empowered to make either by the common or Statute law.

It is a rule made prospectively, and to be applied whenever the cases arise for which it is intended to provide."

I venture to offer this definition: "A By Law is a law made with due legal obligation, by some authority less than the Sovereign and Parliament, in respect of a matter specially or impliedly referred to that authority, and not provided for by the general law of the land."

¹ The following is the entry in that old Law Book:—

"By Laws, in Lat. *Billagenes*, so called by the Goths, the Swedes, the Danes, and the Saxons, from *By*, which in all those languages signifies a *Town*, and from *Lagh* or *Laghen*, which signifies *Laws*. That is to say, Laws made *Obiter*, or by the *By*; such as are made by a common consent in Courts Leet or Courts Baron for the particular good of those that make them further than the common or Statute law doth bind.

"The like are generally allowed by letters patent of Incorporations to any guild or fraternity for the better regulation of trade among themselves and with others."

This is partly taken from Spelman's Glossary in verbo *Bellagines*.

All definitions in law are dangerous, and this may be open to objection, but it describes the subject of the essay upon which I am now entering, as I propose to consider it.

There are various other names by which By Laws have been designated. In charters and records occur the terms "Statutes, Acts, and Ordinances." In other places I have met with the words "Orders, Rules, and Regulations." Various names given to By Laws.

In some recent Acts the terms "Special Rules and Special Regulations," such as those to be made by the owners of mines and certain works are introduced. I refer here to the Alkali Act, 1863 (26 & 27 Vict. cap. 124), and the Mines Regulation Acts (35 & 36 Vict. caps. 76 & 77).

These are indeed only applicable to the particular mines and works, and only operate upon the officers, servants, and workmen thereat. Still they are By Laws such as those which will be noticed hereafter in respect of the officers and servants of Companies and Corporate bodies.

In the recent Act, 38 & 39 Vict., cap. 55, sect. 189, a distinction is drawn between Regulations for the government of the Board and their officers, which Sanitary Authorities may make, and By Laws, but the distinction is only made for the purposes of that Act.

There is one illustration of a By Law given in many books which has been the subject of much discussion in recent times. I allude to the subject of the Assessments made by local bodies for local purposes. In the early Year Book (44. Ed. 3, 18, 19) a question arose upon an assessment made by parishioners for the repair of their church to be levied by distress, and in the course of the argument *Kirton*, who appears to have been a Judge, said that "there is a custom which is called a *By Law* throughout all England to levy a sum to make a bridge, causey, or sea wall."

Whether an Assessment is a By Law.

Accordingly in *the Chamberlain of London's Case*, 5 Co. 63, an ordinance by the inhabitants for the repair of a Church or Highway is termed a *By Law* (See also *Hob.* 212.) In *Clarke's C.*, 5 Co. 64, there is an ordinance for an assessment for the cost of erecting a Court House; and a case is referred to in *Moore* 580, of an assessment for keeping a town clean at the Assizes.

In the case of *the Town of Orford*, 1 Keb. 57, a *By Law* imposed a tax on the inhabitants for the repair of a bridge. And the Corporation of *Winchelsea* made an *order or decree* imposing a rate for maintaining beacons and watch-houses on the coast, which was upheld by the Court of Queen's Bench, *In re Winchelsea Town*. Sir T. Raym. 448, Trem. 586.

Again, the Tolls and dues which were leviable in certain towns, under the names of pontage and murage, for the repair of bridges and walls were described as *ordinances* in 5 Co. 63.

If this expression were expanded it would appear that the authority competent to do so had made a law or decree that the persons liable should pay a certain sum to enable the authority to execute the works referred to, and which that authority was required by law to execute.

This description of the action of the body was recognised by the judges in the case of *Rogers v. Davenant*, 1 Mod. R. 194, in the case of a Church Rate. They stated that the order of the parishioners for the making of a Church Rate was in the nature of a *By Law* which the greater part of the parish can make.

But in the great "*Braintree Church Rate case*," which commenced in 1847 and continued for some years after, much dispute arose as to whether this action of the making of an Assessment was or was not the making of a *By Law*.

The Court of Queen's Bench, when this question was first brought before them, said in *Gosling v. Veley*, 7 Q. B. 451, "A By Law, though made by and applicable to a particular body, is still a law, and differs in its nature from a provision made on or limited to particular occasions; it is a rule made prospectively, and to be applied whenever the circumstances arise for which it is made to provide."

"In this sense it is certainly inapplicable to the resolution of a vestry in any particular case of making a Church Rate, or ordering any other mode of meeting a particular demand in respect of the Church or services therein."

In the subsequent proceedings in the Exchequer Chamber and in the House of Lords, in the case of *Veley v. Burder*, 12 Ad. & E. 303; *Gosling v. Veley*, 12 Q. B. 328; 19 L. J. (Q. B.) 135; 17 Jur. 939; this ruling of the Queen's Bench was much canvassed, and several of the Judges who pronounced judgment upon the question involved in that case dissented from it. They relied strongly upon the various ancient authorities above cited, where the levying of Assessments are stated to be By Laws.

Parke, B., in the Exchequer Chamber, remarked that this "is a term used by Lord Coke in 5 Co. 63a with respect to a Church Rate, which is equally applicable to an order, on the particular occasion and limited to it, and to a prospective order generally applicable to all future cases; just as in Parliament there may be an Act relating only to a particular person or occasion, and neither general nor prospective. The order as to the mode of repairing, though applicable to the particular occasion, is as much a law, and obligatory as such, so far as it relates to the individuals bound by it, as if it had provided for other occasions."

In the judgment which was pronounced by the House of Lords upon the case there was no reference

to this disputed point, and it remains unsettled by judicial authority.

Contracts to
be distinguish-
ed from By
Laws.

It is right to observe that the terms of contracts must be distinguished from By Laws, as the obligations created by both are very different. In contracts there must be mutuality of consideration, but not so in By Laws.

In some codes of Railway By Laws will be found what are clearly only matters of contract, and consequently are the subjects of discussion in Courts of Law as such, and not as By Laws.

Cases illus-
trative of the
definition of
By Laws.

I must, in conclusion, refer to two cases as farther explaining the legal application of this term of *By Law*.

Under an Inclosure Act certain lands having been allotted to a municipal incorporation, the governing Body of that Corporation made a rule or ordinance for the letting of the lands, and ordered that certain sums should be paid annually out of the rents of those lands by the attorneys of the Corporation to certain members thereof. This was held by the Court of Exchequer to be a By Law.—*Hopkins v. The Mayor of Swansea*, 4 M. & W. 621; 8 M. & W. 901.

But where a Gas Light Company was empowered by Statute to make By Laws under seal for its government and for regulating the proceedings of the Directors, officers, and servants, at a meeting of the Company a resolution was passed, *not under seal*, that a remuneration should be allowed to every Director for his attendance. It was held that this was not a By Law within the Statute.—*Dunston v. Imperial Gas Light Co.*, 3 B. & Ad. 125.

CHAPTER II.

OF THE AUTHORITY FOR MAKING THE BY LAW.

I have now to consider the authority by which the By Law is made. This involves the inquiry as to who may make it, and under what authority they act.

It will be seen that the second inquiry will dispose of the first.

Now the authority is established—(1) By necessary implication; (2) By Charter; (3) By express Statute; (4) By Custom. Modes of showing Authority.

1. As to the Implication. It is laid down in many cases and decisions that where a Corporation is created by Charter which contains no provision on the subject, the Corporate body has, as a necessary incident, power to make rules, ordinances, and Statutes for the rule, government, and well ordering of the subjects of the Incorporation, and in relation to the purpose for which the same is instituted. See the case of *Sutton's Hospital*, 10 Co. 31a; Jenk. Cen. 273; *Norris v. Staps*, Hob. 211, 1 Roll. Abr. 513; *Davenant v. Hurdes*, Moo. 584; *City of London v. Wood*, 12 Mod. 686; *The K. v. Westwood*, 7 Bing. 1; and the judgment of Tindal, C.J., in *Veley v. Burder*, 12 Ad. & E. 303. 1. By Implication.

It is therefore expressed in the case from Coke's Report, and from that in Hobart, that it is unnecessary that such authority should be granted by the Charter which creates the Corporation. In Corporate Bodies.

As this authority is implied in the case of a Corporation created by Charter, so its existence will be implied in Corporations which exist by Prescription. — *Corporation of Colchester v. Goodwin*, Cart. 110.

Again, where a Franchise is granted for the benefit of a Body Politic, that body has power incidentally to regulate the exercise of this Franchise for the public benefit by By Laws.

Hence a By Law was made by the Corporation of the City of London that a person elected to the office of Sheriff should not be exempted from it (unless he swore that he was not worth £1000, and brought six approved persons to be his compurgators), and that upon proclamation made in the Guildhall he should appear and enter into bond to accept the office or pay the sum of £400. This was held to be a good By Law, as it was made only to secure substantial persons to hold the office; and as every member had the benefit of the Franchise, so he was compellable by penalty to undergo the charge to which the Corporation was liable.

Here power was given to the City to appoint sheriffs, and it would have been vain to give such power if the City could not compel persons when elected to serve.

This was decided in the case of *The City of London v. Vanacre*, reported in 1 L. Raym. 496; 1 Salk. 142; Carth. 482; 5 Mod. 439; 12 Mod. 270.

So also in former days, where there was no prescribed or prescriptive mode of election in Municipal Corporations, the general Body of the Corporation could by a By Law regulate that mode.—*Newling v. Francis*, 3 T. R. 196.

I shall have occasion to notice hereafter how the Corporate body was bound to execute this power, though since recent Legislation regarding such Corporations the power does not exist with reference to those which are included in the Municipal Corporations Acts.

In Non-Corporate Bodies.

I find that this doctrine as to the implied power of Corporations was extended to other bodies of less definite character. Thus—

In *Norris v. Staps*, Hob. 211, it is stated that all the parishioners or Townsmen of one parish or Town may make By Laws, for they are by the common law (as it were) incorporate for some necessities, both common and peculiar, to that distinct body, as for repairing their Church or the like.

Accordingly Cresswell, J., in the case of *Gosling v. Veley*, 29 L. J. (N. S.) Q. B. 149, observes: "There are several authorities for saying the parishioners are a Corporation for some purposes, and the majority may, without a *custom*, make By Laws to bind the minority, as, for instance, for the repair of the parish church, for a highway, for a sea-wall, and so forth; but the only By Law of which there is any trace is a By Law to raise money to be applied in repairing the church."

I have already observed upon the question whether these assessments are not properly treated as By Laws.

Similar powers, however, were claimed and exercised by the homage in Manors, the tenants in Courts Baron and Courts Leet; but as these are more generally claimed under customs, I will defer at present further reference to them.

Courts of Justice, when established, are empowered to make rules and orders to regulate their practice, and the course of procedure within them, and such rules and orders are By Laws. As to Courts of Justice.

The Supreme Courts of Justice have long exercised this power. It is true that they exist by the ancient constitution of the country, and it may be urged that their powers exist by custom; but I think it is more justifiable to refer their jurisdiction as regards the rules of practice, which they make and rescind from time to time, as derived from the implication above adverted to.

These rules have, however, frequently been re-

scinded or altered by the Legislature in general Statutes; and the recent Court of Judicature Act, 1875, 38 & 39 Vict. cap. 77, is the most striking example in modern times.

The practice of newly-created Courts is generally regulated by the Statute which creates them. But where the Legislature has not interfered, the incidental power operates; and the Court, however constituted, has power to lay down rules and regulations which will operate as By Laws.

The practice of a Court is the condensed evidence of the By Laws which prescribed the course of procedure in reference to the conduct of suits, actions, and proceedings in the Court.

In Guilds and
Trading Com-
panies.

Private associations for trading or commercial objects, such as the ancient guilds and companies, had and still have by necessary implication power to make By Laws to regulate themselves, to govern their members, and to carry out the purport and object of their association.

A prominent illustration of this class of associations and of their powers will be found among the Livery Companies of London. Some, indeed, have Charters of Incorporation, and act upon them; but others do not possess such sanction, and have made By Laws which depend upon the above implied authority for support.

Among the By Laws which they have made, the Courts of Law have had occasion to consider such as prescribe the amount of contributions to be paid by the members, either regularly or on occasional ceremonies or contingencies, and have recognised the authority to make such By Laws.—*Taverner's Case*, Raym. 446; Trem. P. C. 461.

In *The Stationers' Company v. Salisbury*, Comb. 221, an action was brought on a By Law made by a trading Company that the Master and others should elect members into the Livery, and if any person so

elected should refuse to accept the office, he should forfeit £40. There was no objection to the By Law on the ground of want of authority, though it appears to have depended upon implication only.

Religious bodies, voluntarily associated together, can make regulations for enforcing discipline within their body, which will be binding on those who expressly, or by implication, have assented to them. —*Long v. Gray*, 9 Jur. (N.S.) 805; 1 Moo. P. C. (N. S.) 411. Religious Associations.

Again, in the modern associations for social objects, known as *Clubs*, the general body have power to make By Laws or rules for the governance of themselves, and these rules are recognised by the Courts of Law. The members are bound by them, and cannot obtain redress against the decision of the general or governing body upon them where they are fairly and *bonâ fide* acted upon. In Voluntary Associations as Clubs.

One common By Law provides for the expulsion of members whose presence may be deemed obnoxious to the interest or well-being of the Club; and this was the subject of enquiry in two recent cases, of *Hodgkinson v. M. of Exeter*, L. R. 5 Eq. 63, and *Lyttleton v. Blackburne*, 33 L. T. 642.

The like rule prevailed in regard to Associations for Literary and Scientific purposes; but they are now provided for by express Statute, as will be shown hereafter. Literary and Scientific Bodies.

Where public Bodies or Boards are empowered by Charter to admit members into their body, or to grant licences to practise professions, upon examination, they are empowered by implication to make By Laws as to the mode and manner of such examinations. Professional Admission.

Hence a By Law, by which a candidate for admission to practise as a physician was submitted to a preliminary examination by a selected committee, who were to report to the general body as to the sufficiency of his qualifications, appeared to the Court of King's Bench to be valid.—See *R. v.*

Dr. Askew, 4 Burr. 2186. And it was afterwards held that the College of Physicians could lawfully make a By Law that no person should be admitted as a candidate for admission into their College unless he had taken a degree of M.D. at one of the Universities of Oxford, Cambridge, or Dublin; with a proviso that the President might nominate a candidate once every other year; and that any Fellow might propose a Doctor of Physic of a certain standing, who, if approved at two meetings of the Fellows, might be admitted.—*The K. v. The College of Physicians*, 7 T. R. 282; though Lord Kenyon expressed his opinion that the first part of the By Law would have been bad as imposing an unreasonable restraint, an objection which will be considered hereafter.

It will also be seen that some Statutory provisions have been made in reference to this power in certain cases.

As a farther illustration of the implied power of making By Laws, I must refer to the case of *Hagleton v. The East India Company*, 3 B. & P. 55.

The East India Company were bound by Statute 9 & 10 Will. 3. cap. 44, sect. 69, to sell their imported goods by public sale, by auction, &c. It was admitted that the Company could under that Act make regulations which were considered as By Laws to govern their sales. But as a subsequent Statute, 18 Geo. 2, cap. 26, made express provisions to regulate the deposits, forfeitures, and incapacities of bidders at tea sales of the Company, the Court of Common Pleas doubted whether the Company could make any other regulations affecting those sales beyond what were in the Statute.

And in like manner, though a Corporation has an incidental power to make By Laws, if the power be given by Charter to a select body, the right in the body at large is impliedly taken away. See *K. v. Westwood*, 4 B. & C. 798.

This leads me to the consideration of the next head of this Chapter.

2. As to the Charter Authority.

2. By Charter.

Although many Corporations exist from immemorial time, and no record of their creation can be found, a great many have been created by express Charter from the Sovereign.

In such Charters power has generally been given to the Corporation created thereby to make By Laws for its governance, and for the purposes of its foundation or creation.

As already noticed, sometimes the power so given was superfluous, as the very creation of the Corporation involved the power of making By Laws. But sometimes the power extended beyond what would be necessarily implied from the mere creation of the Corporation.

The prerogative of the Crown in former days indeed authorized an extensive range of provisions as regarded such By Laws in Charters; but at the present time it will be found that a Charter of Incorporation in its provisions as to By Laws is limited and restricted to a few customary terms, and to the purpose of furthering or regulating the object of the incorporated body, or the general scope of the Charter.

Beyond the implied authority.

But when the Charter does set out the power, it is to be executed according to the terms of the Charter, and not according to any general rule which the mere implication of the law would have supported. So that where a Charter is granted for a particular purpose or object, and the power of making By Laws is granted, this power is restrained by the purpose or object.

Present practice.

Thus in *Child v. The Hudson's Bay Company*, 2 P. Wms. 209, Lord Macclesfield said: "A Corporation has an implied power of making By Laws; but where the Charter gives the Company a power to

Power limited by terms of Charter.

make By Laws they can only make them in such cases as they are enabled to do by the Charter, for such power by the Charter implies a negative, that they shall not make By Laws in any other cases."

Littledale, J., in *The K. v. Westwood*, 7 Bing. 53, observes that this was a Corporation established for a particular purpose, and the By Law which had been made was out of the purpose for which they were incorporated.

In *Chilton v. The London and Croydon Railway Company*, 16 M. & W., 228, Parke, B., indeed, remarks that this may have been a correct decision, but that its principle was not adhered to in the House of Lords in *R. v. Westwood*, 7 Bing. 1.

It is, however, necessary to observe that where a Charter confers an express power on a certain part of a Corporation as to a particular subject, there is no ground to presume an implied power as existing in the body at large (*per Vaughan B.*) in *K. v. Westwood*, 7 Bing. 29.

How far im-
plied power,
remains.

And where a special power is granted, though it *pro tanto* restrains and takes away the general power, yet this general power remains as to those cases or subjects to which the special power does not extend. See the judgments of *Gaselee* and *Littledale, J. J.*, in the same case. Indeed, the Court of Queen's Bench, when this case was before that Court (4 B. & C. 781), decided that as the power to make By Laws is incident to the whole body of every Corporation, if a Charter give to a select part of the body power to make By Laws touching certain matters, that Charter does not take away from the body at large their power to make By Laws touching other matters not specified in the Charter.

Case of sur-
render of
Charter.

These remarks and decisions have arisen upon the Charter itself. But the Charter may be surrendered

and a new one granted. If that should revoke actually or impliedly the power of making By Laws, that power will cease.

But when a Corporation having power to make By Laws, made one and afterwards received another Charter of incorporation and confirmation, it was held that the By Law remained in force.—*Mayor of Cambridge v. Herring*, 1 Lutw. 402.

A question has arisen as to the effect of enlarging the boundaries of Corporations where they have been empowered by Charter to make By Laws, but there has been no judicial decision. Some persons consider that the By Laws made for the old district cease to be operative in the new district, and that new laws must be made. But the above decision leads to a different conclusion.

Enlargement
of Borough
boundaries

I must here remark that although the Royal Charter may give power to make a By Law as to some particular matter, if the grantee could not make such a By Law because it would violate the general law, the Charter will not justify the By Law. See *The Taylors of Ipswich v. Sherring*, 1 Roll. Rep. 4.

I have already adverted to the scope of the By Laws usually authorized by Charter. But a much more extensive range of objects has been established by recent Statutes for government or control by By Laws.

3. By Statute.

This is the 3rd head to which I referred above.

In modern times Parliament has delegated the function of making laws in reference to a great variety of subjects to authorities in Local Districts, or to other bodies having control over special subjects. This practice has prevailed because the minuteness or the intricacies of the necessary provisions rendered

the due attention of Parliament thereto impossible, or highly inconvenient.

By Local
Acts.

This has prevailed to a very large extent in private Local Acts. Corporate Bodies, Improvement Commissioners, Public Trustees, and similar associated authorities have been empowered to make By Laws for the purposes and according to the provisions set forth in the Acts passed for the creation of those bodies or the extension of their powers.

It is impossible for me to give any account of those Local or Special Statutory provisions, though I must remark that the public have little notion of the great varieties of laws which now prevail in the different parts of the kingdom in relation to the same subjects.

By general
Statutes.

But there are a considerable number of public general Acts by which this authority has been conferred, and I must now direct attention to them.

The subjects are very miscellaneous; and the Statutes applicable to them are so unconnected that I cannot make any lucid order or arrangement of them, but feel that I can do little else than follow a Chronological order, bringing together in some cases analogous provisions.

Limitation
on power.

But I think it right, before I set them out, to advert to the decision of the Court of Queen's Bench in the case of *Q. v. Mary Wood*, 5 E. & B. 49, where, dealing with a question which arose under the Public Health Act, 11 & 12 Vict. cap. 63, it was laid down that Local Boards have no general powers to make By Laws for carrying out the purposes of the Act, but only such as are authorized by the Act.

And, again, in *Sheil v. the Mayor of Sunderland*, 6 H. & N. 803, Sir F. Pollock, C.B., referring to the 21 & 22 Vict. cap. 98, sect. 34, says: "Being an Act in restraint of the use which a person may make of his own property, coupling such restraint with pains

and penalties, we must be careful to see how far the restraint is really imposed by the Act. We are not at liberty to consider what the Legislature would have done if this particular case had come before them, but must see what they have done."

There are general rules of construction which must be carefully attended to as applicable to the different Statutes about to be considered. Local authorities, entrusted with the power of legislation, are apt to overlook the precise limit of the power so conferred upon them, and to seek to make laws in relation to subjects not within the range of the delegation to them, or in a manner or to an extent beyond that which is so delegated. The superior Courts of Law, when consulted, reject their laws, and reverse the decisions which may have been given upon them, and occasionally discredit their proceedings.

I may farther observe here, that for the most part the Statutes only confer upon the body referred to a *power* to make By Laws; but in two instances, at least, as will be seen hereafter, the Legislature have made it *the duty* of the body to make By Laws, and yet have reserved to a Department of the State the power to sanction or disapprove of the By Laws when made.

When it is a
duty to make
By Laws.

There is some inconsistency in this as a legal provision.

In the case of Mines, indeed, the Secretary of State may propose to the owner, agent, or manager, new special rules or amendments of existing rules, but cannot apparently enforce the making of them. 35 & 36 Vict. cap. 76, sect. 55; cap. 77, sect. 27.

It is to be noticed that the power of making By Laws, though sometimes under the name of orders, By Laws by
Departments of
the State.

has been conferred by the Legislature upon certain Departments of the State.

Thus the Poor Law Commissioners were empowered to make orders in reference to the mode of administering relief, the regulating the action of Boards of Guardians, the Management of Workhouses, the Education of Pauper Children, and some other matters of a like nature.

The Board of Trade have been empowered to make By Laws or orders under The Railway Acts, The Petroleum Act, and perhaps under some other Acts.

The Secretary of State can make By Laws under The Explosive Substances Act, 38 & 39 Vict. cap. 17, sect. 37, and propose Special rules for adoption, though not to make them, under The Mines Regulations Acts, 35 & 36 Vict. caps. 76, 77.

The Privy Council can make orders and regulations in reference to animals and cattle, to prevent the spread of diseases among such animals and cattle under 32 & 33 Vict. cap. 70.

The Judges of the Superior Courts and of the County Courts have, by various statutes, been empowered to make rules, orders, and regulations for prescribing and governing the practice and the pleadings of parties in those Courts.

I am not, however, prepared to give all the cases in which powers have been thus given to Public Departments, nor to follow them farther in this Essay.

By Laws
under Muni-
cipal Corpora-
tions Act.

But I proceed to consider the Statutory powers which apply to the various bodies of a lower character who have been empowered or required to make By Laws.

Thus the 5 & 6 Will. 4, cap. 76, sect. 90 (*The Municipal Corporations Act*), enacted "That it should be lawful for the Council of any *Borough* to make such By Laws as to them shall seem meet for *the*

good rule and government of the Borough, and for the prevention and suppression of all such *nuisances* as are not already punishable in a summary manner by virtue of any Act in force throughout the Borough."

Farther: Sect. 51 of that Act empowers the Town Council of a Borough "to make a By Law, and thereby fix the fines to be paid by the Mayor, Aldermen, Councillors, Auditors, or Assessors, who, upon being appointed to office, *refuse to accept and execute it.*"

By 7 & 8 Vict. cap. 110, sect. 25, *Joint Stock Companies*, when incorporated, were empowered:—

By Joint
Stock Com-
panies.

"To make from time to time at some general meeting of Shareholders, specially summoned for the purpose, By Laws *for the regulation of the Shareholders, Members, Directors, and Officers of the Company*, such By Laws not being repugnant to, or inconsistent with, the provisions of that Act, or of the deed of settlement of the Company."

But by 25 & 26 Vict. cap. 89, this Act was repealed, and all the regulations are contained in the Articles of Association.

By 8 & 9 Vict. cap. 16, sect. 124 (*The Companies Clauses Consolidation Act*, 1845), it is enacted that "the Company from Time to Time may make such By Laws as they think fit, for the purpose of *regulating the Conduct of the Officers and Servants of the Company*, and for providing for the *due Management of the Affairs of the Company* in all respects whatsoever."

By Com-
panies.

The Commissioners Clauses Act, 10 & 11 Vict. cap. 16, in sect. 96, confers exactly the same powers upon the Commissioners.

By Commis-
sioners.

Following these precedents, the Public Health Act, 11 & 12 Vict. cap. 63, in sect. 24, enabled the Local Board of Health in every non-corporate district to make *By Laws* with respect to the *summoning notice, place, management, and adjournment of their meetings*, and generally with respect to the *transac-*

Regulations
by Local
Boards.

tion and management of business by such Board under that Act.

By sect. 37, every Local Board of Health was required to make By Laws for regulating the *duties and conduct* of the several *officers and servants* appointed by such Board.

The recent Act, 38 & 39 Vict. cap. 55, sect. 189, and Sched. I., No. 1, contains the same provision; but instead of *By Laws*, terms them *Regulations*, and applies to Local Boards, *i.e.* Boards for Local Government Districts.

Literary and
Scientific Insti-
tutions.

The Statute 17 & 18 Vict. cap. 112 (*The Literary and Scientific Institutions Act*, 1854), in sect. 24, provides that:—"In any institution the governing body, if not otherwise legally empowered to do so, may, at any meeting specially convened, according to its regulations, make any By Law for the *better governance of the institution, its members or officers, and for the furtherance of its purpose and object.*"

By Laws as
to Railways.

By the 8 & 9 Vict. cap. 20, the Act for the *Regulation of Railways*, it is enacted in sect. 108, that "the Company, from time to time, subject to the provisions and restrictions in this and the special Act contained, may make *Regulations* for the following purposes (that is to say):—

- "For regulating the mode by which, and the speed at which carriages using the Railway are to be moved or propelled;
- "For regulating the times of the arrival and departure of any such carriages;
- "For regulating the loading or unloading of such carriages, and the weights which they are respectively to carry;
- "For regulating the receipt and delivery of goods, and other things which are to be conveyed upon such carriages;
- "For preventing the smoking of tobacco, and the commission of any other nuisance in or upon such carriages, or in any of the stations or premises occupied by the Company;

"And generally for regulating the travelling upon, or using and working of the Railway;

"But no such regulation shall authorize the closing of the Railway, or prevent the passage of engines or carriages on the Railway, at reasonable times, except at any time when, in consequence of any of the works being out of repair, or from any other sufficient cause, it shall be necessary to close the Railway or any part thereof."

Then, in sect. 109, it is enacted that—

"For better enforcing the observance of all or any of such regulations, the Company, subject to the provisions of an Act passed in the fourth year of the reign of Her present Majesty, intituled, 'An Act for Regulating Railways' (i. e., 3 & 4 Vict. cap. 97), may make *By Laws*.

Then the Statute 26 & 27 Vict. cap. 92, sect. 32, enabled a Railway Company, from time to time, to make *By Laws* in relation to *passengers, animals, and goods conveyed* in and upon the *Steam Vessels*, and as to the *embarkation and disembarkation* thereof respectively.

In connection with the subject of Railways, it is convenient to annex the regulations as to *Tramways*. As to Tramways.

The 33 & 34 Vict. cap. 78, sect. 46, enacts that, subject to the provisions of the Special Act authorizing any Tramway and that Act, the Local Authority of any district in which the same is laid down may, from time to time, make *Regulations* as to the following matters:—

"The rate of speed to be observed in travelling on the Tramway.

"The distances at which carriages using the Tramway shall be allowed to follow one after the other.

"The stopping of carriages using the Tramway.

"The traffic on the road in which the Tramway is laid.

"The promoters of any Tramway and their lessees may, from time to time, make regulations.

"For preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them.

"For regulating the travelling in or upon any carriage belonging to them."

And for better enforcing the observance of all or

22 OF THE AUTHORITY FOR MAKING THE BY LAW.

any of such regulations, it shall be lawful for such Local Authority (and promoters respectively) to make *By Laws* for all or any of the aforesaid purposes.

Other *By Laws* relating to the drivers and conductors on these Tramways will be mentioned hereafter.

By Laws as
to Baths and
Washhouses.

The Act which provides for *the establishment of Baths and Washhouses* (9 & 10 Vict. cap. 74), in sect. 23 incorporates the provisions of the Companies Consolidated Clauses Act, 1845, with respect to the making of *By Laws*, subject to the provision therein-after contained. Then in sect. 34 it is enacted that the *By Laws* which the *Council and Commissioners* respectively *may* from time to time make, alter, repeal, and enforce, shall include such *By Laws* for the management, use, and regulation of the public baths and washhouses and open bathing-places, and of the persons resorting thereto respectively, as the Council and Commissioners respectively shall think fit; and such *By Laws* shall make sufficient provision for the several purposes *respectfully* expressed in the Schedule (A) to that Act.

The Schedule (A) was as follows:—

By Laws to be made in all cases

- “For securing that the baths and washhouses and open bathing-places shall be under the due management and control of the officers, servants, or others appointed or employed in that behalf by the council or commissioners.
- “For securing adequate privacy to persons using the baths and washhouses and open bathing-places, and security against accidents to persons using the open bathing-places.
- “For securing that men and boys *above* eight years old shall bathe separately from women, and girls and children *under* eight years old.
- “For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour, and nuisances.
- “For determining the duties of the officers, servants, and others appointed by the council or commissioners.
- “In parishes. For regulating the procedure of the commissioners.”

It is proper to observe that the 35 & 36 Vict. cap. 79, sect. 7, enacted that where the Baths and Washhouses Acts were in force within the district of any Urban Sanitary Authority, such Authority should have all the powers and rights in relation thereto exercisable by or attached to the Council acting in the execution of the Act; and where they are not in force within the district, the Urban Sanitary Authority may *adopt* them. And this is continued by 38 & 39 Vict. cap. 55, sect. 10. The adoption is not quite the same as the Incorporation of the Statute.

Besides those provisions relating to Baths, the Legislature has also dealt with Public Bathing on the Sea-shore and in Rivers.

As to Public
Bathing on the
Sea-shore and
in Rivers.

The Towns' Police Clauses Act, 1847 (10 & 11 Vict. cap. 89) in sect. 69, with respect to *Public Bathing*, enacted "that where any part of the sea-shore or strand of any river used as a public bathing-place is within the limits of *the special Act, the Commissioners* may make By Laws for the following purposes (that is to say):—

- "For fixing the stands of bathing machines on the sea-shore or strand, and the limits within which persons of each sex shall be set down for bathing, and within which persons shall bathe :
- "For preventing any indecent exposure of the person by the bathers :
- "For regulating the manner in which the bathing machines shall be used, and the charges to be made for the same :
- "For regulating the distance at which boats and vessels let to hire for the purpose of sailing or rowing for pleasure shall be kept from persons bathing within the prescribed limits."

This provision has been rendered applicable to Local Boards by the 21 & 22 Vict. cap. 98, sect. 44, and to all Urban Sanitary Authorities by the 35 & 36 Vict. cap. 75, sect. 7, and the 38 & 39 Vict. cap. 55, sect. 171.

It is to be observed that this enactment applies to the *part used as a public bathing-place*. Hence the authority does not, as is sometimes supposed, extend

indefinitely along the shore or the banks of the river. There is a limitation as to the part which is marked out by the general usage of the locality for public bathing.

Individual bathing at places not used for public bathing is not within the terms of this enactment; but if there be any indecent exposure in such bathing, there will be a remedy by indictment for a misdemeanor.

No mention is made above as to *the hours of bathing*; but it may be inferred that when the authority fix the stands, they can fix the hours during which the stands shall be occupied.

Sanitary
purposes.

By Laws for
removing of
certain dirt
and refuse.

I proceed now with By Laws connected with *Sanitary objects and purposes*.

The 11 & 12 Vict. cap. 63, sect. 55, had empowered Local Boards of Health to make By Laws with respect to the removal of dust-ashes and refuse, and for the prevention of the deposit thereof in the Street.

This clause was repealed by the 21 & 22 Vict. cap. 98, and provisions as to By Laws upon the same subject were made in sect. 32, which were extended to Sewer Authorities by 31 & 32 Vict. cap. 115, and subsequently transmitted to all Sanitary Authorities by the 35 & 36 Vict. cap. 75.

They have now been declared in the 38 & 39 Vict. cap. 55, sect. 44, in these terms.

"Where the *Local Authority* do not themselves undertake or contract for—

"The cleansing of footways and pavements adjoining any premises,

"The removal of house refuse from any premises,

"The cleansing of *earth-closets* privies, ash-pits, and cesspools belonging to any premises,

they may make By Laws imposing the duty of such cleansing or removal, *at such intervals as they think fit*, on the occupier of any such premises."

The Local Authority means both the Urban and Rural Sanitary Authorities.

An *Urban Authority* may also make By Laws

"For the prevention of nuisances arising from snow, filth, dust, ashes, and rubbish, and *for the prevention of the keeping of animals on any premises so as to be injurious to health.*"

There are some few variations from the previous Act, which are marked in italics, and it is to be observed that, though any Sanitary Authority is empowered to make the first class of By Laws, only an Urban Authority can make the second.

But as the Local Government Board can confer Urban powers upon any Rural Sanitary Authority, they can confer this power upon any such authority.

Again: the Public Health Act, 1848 (11 & 12 Vict. cap. 63), in sects. 52 & 73, required notices As to the laying out of streets and the erection of buildings. as to the building and rebuilding of houses, and as to the laying out of streets, to be given to the Local Board, and empowered the Board to approve or disapprove, and to enforce their disapproval of the plans, an appeal being given to the General Board of Health then existing.

But a change was made by the Local Government Act, 1858 (21 & 22 Vict. cap. 98), which in sect. 34 repealed those clauses, and enacted that By Laws might be made in respect of those matters. This clause was slightly extended by 37 & 38 Vict. cap. 89, sect. 44, and the provision is now expressed in the 38 & 39 Vict. cap. 55, sect. 157, in the following terms:—

"Every Urban Authority may make By Laws with respect to the following matters (that is to say):—

- "(1) With respect to the level, width, and construction of new streets, and the provisions for the sewerage thereof:
- "(2.) With respect to the structure of walls, foundations, roofs, and *chimneys* of new buildings for securing stability and the prevention of fires, and for purposes of health:
- "(3.) With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings:
- "(4.) With respect to the drainage of buildings, to water-closets, *earth-closets*, privies, ash-pits, and cesspools, in connection with buildings, and to the closing of buildings, or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation.

The words in italics are newly added.

It is farther enacted in the same section that the same authority "may further provide for the observance of such By Laws by enacting therein such provisions as they think necessary—

- "As to the giving of notices.
- "As to the deposit of plans and sections by persons intending to lay out streets, or to construct buildings,
- "As to inspection by the Urban Authority,
- "And as to the power of such authority (subject to the provisions of this Act) to remove, alter, or pull down any work begun or done in contravention of such By Laws."

What buildings affected.

But it is "provided that no By Law made under this section shall affect any building erected in any place (which at the time of the passing of this Act is included in an Urban Sanitary District) before the Local Government Acts came into force in such place, or any building erected in any place (which at the time of the passing of this Act is not included in an Urban Sanitary District) before such place becomes constituted or included in an Urban District, or by virtue of any order of the Local Government Board subject to this enactment."

The terms thus used exclude an ambiguity which existed upon the former Act, and show conclusively that the By Laws to be thus made are only to apply to new buildings, that is to say, to buildings erected since the times specified.

Now, not only a building newly erected is a new building, but the 21 & 22 Vict. cap. 98, sect. 84, enacted, and the enactment is renewed in 38 & 39 Vict. cap. 55, sect. 159, that "For the purposes of this Act, the re-erecting of any building pulled down to or below the ground-floor, or of any frame-building of which only the framework is left down to the ground-floor, or the conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, shall be considered *the erection of a new building*." What is a new building.

Here also power is granted to the Urban Authority only to make By Laws on this subject, though the power may be conferred upon any Rural Sanitary Authority by the Local Government Board.

The 11 & 12 Vict. cap. 63, sect. 64, had provided that certain offensive businesses should not be established within their district without their consent, and that the Board might make By Laws with respect to such businesses. By Laws as to offensive businesses.

This clause is repealed by the 38 & 39 Vict. cap. 55. But sect. 112 "prevents the establishment within the district of an Urban Sanitary Authority, without their consent in writing, of any offensive trade (that is to say), the trade of a

Blood boiler, or
Bone boiler, or
Fellmonger, or

Soap boiler, or
Tallow melter, or
Tripe boiler, or

any other noxious or offensive trade, business, or manufacture."

The next sect., No. 113, then proceeds that—

"Any Urban Authority may from time to time

make By Laws with respect to any offensive trades established *with their consent* either before or after the passing of this Act, in order to *prevent or diminish the noxious or injurious effects thereof.*"

The earlier Statute included in its enumeration of the trades that of "a slaughterer of cattle, horses, or animals of any description;" but this is now provided for separately, as will be shown hereafter.

It is to be observed that the By Laws are only to be made with reference to trades established with the consent of the Urban Authority. The power therefore does not extend to trades established before the creation of the district; and though the power is confined to the Urban Authority, here also the Local Government Board can extend it to the Rural Authority.

By Laws as
to Markets.

The 10 & 11 Vict. cap. 14, The *Markets and Fairs Act*, contains the following provisions in sect. 42, in regard to *Markets* established for public use in Urban Districts:—

"The undertakers *may* from time to time make such *By Laws* as they think fit, for all or any of the following purposes (that is to say):—

- "For regulating the use of the market-place and fair, and the buildings, stalls, pens, and standings therein, and for preventing nuisances or obstructions therein, or in the immediate approaches thereto:
- "For fixing the days, and the hours during each day, on which the market or fair shall be held:
- "For inspection of the *slaughter-houses*, and for keeping the same in a cleanly and proper state, and for removing filth and refuse at least once in every twenty-four hours, and for requiring that they be provided with a sufficient supply of water, and preventing the exercise of cruelty therein.
- "For regulating the carriers resorting to the market or fair, and fixing the rates for carrying articles carried therefrom within the limits of the special Act.
- "For regulating the use of the weighing-machines provided by

the undertakers, and for preventing the use of false or defective weights, scales, or measures :
 “For preventing the sale or exposure for sale of unwholesome provisions in the market or fair.”

The 21 & 22 Vict. cap. 98, sect. 50, incorporated so much of the 10 & 11 Vict. cap. 14, as related to By Laws, and now

The Public Health Act, 1875, 38 & 39 Vict. cap. 55, sect. 167, enacts that—“An Urban Authority *may* with respect to any *market* belonging to them make By Laws for any of the purposes mentioned in sect. 42 of The Markets and Fairs Clauses Act, 1847, so far as those purposes relate to markets.”

This clause is confined to Markets, and no provision is made as to *Fairs*. Where Fairs exist independently of these Acts, it may be lawful to make By Laws in reference to them, but such By Laws cannot be enforced summarily.

It will be observed that one of the subjects to which the above By Laws apply are *Slaughter Houses* which are in the markets. By Laws as to Slaughter Houses.

The 11 & 12 Vict. cap. 63, in sect. 62, enabled Local Boards to provide Slaughter Houses, and to make By Laws with respect to them ; and it also enabled them to make By Laws in respect of other Slaughter Houses. There was a repeal of this part of the clause in sect. 48 of the 21 & 22 Vict. cap. 98, and doubts have been entertained as to the extent of that repeal ; but the doubt is removed by the 38 & 39 Vict. cap. 55, sect. 169, which requires every Urban Authority to make By Laws with respect to *the management and charges* for the use of any Slaughter Houses provided by them.

The Interpretation Clause of that Act, sect. 4, explains the terms “Slaughter House” as including “the buildings and places commonly called slaughter

houses and knackers' yards, and any building or place used for slaughtering cattle, horses, or animals of any description for sale."

As regards Slaughter Houses provided by other persons, the Towns Improvement Clauses Act (10 & 11 Vict. cap. 34), in sect. 128, *required* the Commissioners from time to time by By Laws to be made by them, to make regulations

- "For the licensing, registering, and inspection of Slaughter Houses and Knackers' Yards within their district;
- "And preventing cruelty therein ;
- "And for keeping the same in a cleanly and proper state ;
- "And for removing filth at least once in every twenty-four hours ;
- "And requiring them to be supplied with a sufficient supply of water."

This clause applied to the Commissioners in places under Local Acts for the Improvement of Towns.

But the 21 & 22 Vict. cap. 98, in sect. 45, incorporated these provisions for all Local Board Districts ; and now the 38 & 39 Vict. cap. 55, sect. 169, has enacted that "for the purpose of enabling any Urban Authority to regulate Slaughter Houses within their district the provisions of the Towns Improvement Clauses Act, 1847, with respect to Slaughter Houses shall be incorporated with this Act."

But it is provided that "nothing in this section shall prejudice or affect any rights, powers, or privileges of any persons incorporated by any Local Act passed before the passing of the Public Health Act, 1848, for the purpose of making and maintaining Slaughter Houses."

Thus it appears that an Urban Sanitary Authority may make By Laws with reference to Slaughter Houses in Markets owned by them, or in Slaughter Houses provided by them, and in Slaughter Houses belonging to other persons except such as were provided under Local Acts before the 11 & 12 Vict. cap. 63.

It is to be observed that the language of the 10 & 11 Vict. cap. 34 is compulsory, because it required all newly-established Slaughter Houses to be licensed and registered. Hence the Commissioners were required as a duty to make By Laws as to such *licensing* and *registration* and the other matters.

Here also the authority and duty may be conferred upon the Rural Sanitary Authority by the Local Government Board.

It is here proper to refer to the cases of *Common Lodging Houses* and *ordinary Lodging Houses*, as the Legislature have made various regulations applicable thereto, and have conferred upon different Bodies authority to make By Laws for their government and management. By Laws as to Common Lodging Houses and ordinary Lodging Houses.

The provisions applicable to these two classes differ. Thus they apply generally to Common Lodging Houses, but only to Lodging Houses in certain cases. Moreover, the provisions affecting the two classes are not quite identical. They must therefore be considered separately.

First—as to Common Lodging Houses.

The Towns Improvement Clauses Act, 10 & 11 Vict. cap. 34, sect. 116, prevented the use as a Public Lodging House within the limits of the district of any house (not being a Licensed Victualling House) which is rated to the Poor at less than £10, and in any case where it was not registered.

It defines a Public Lodging House to be a house “in which persons are harboured or lodged for hire for a single night, or for less than a week at one Definition of a Public Lodging House.

time, or any part of which is let for any term less than a week."

Sect. 117 enables the Commissioners from time to time to fix the *number* of Lodgers and to *make rules for promoting cleanliness and ventilation*.

They are required to order that a table of these rules shall be hung up or placed in a conspicuous part of each room into which Lodgers are received, and the keepers of the Lodging House at all times to observe the said rules.

The 11 & 12 Vict. cap. 63, which was passed in the following year, in sect. 66, required Common Lodging Houses in the districts of Local Boards of Health to be registered, and required the Local Board of each district to make By Laws, for *fixing the number of Lodgers, for promoting cleanliness and ventilation, with respect of inspection and the conditions and restrictions under which it might be made*.

The first-mentioned Act was limited as above stated; but the subsequent Act, 14 & 15 Vict. cap. 28, in sect. 9, enacted that "the Local Authority may from time to time make regulations respecting Common Lodging Houses within its jurisdiction for all or any of the purposes respecting the same, for which the Local Board of Health are by the Public Health Act, 1848, authorized to make By Laws, and *for the well-ordering of such houses, and for the separation of the sexes therein*."

The Local Authority here referred to was one of the following bodies:—

Within the Metropolitan Police District, the Commissioners of Police.

Within the District of a Local Board, such Local Board.

Within a Borough not a Local Board District, the Council of the Borough.

Within an Improvement Act District, the Commissioners for executing the Act.

In all other Places, the Justices of the Peace in Petty Sessions.

By the 35 & 36 Vict. cap. 79, sect. 7, the powers of the Local Authority under the above Act were transferred to the Urban Sanitary Authority, where the Lodging House is within the district of such authority, and sect. 8 transferred the same to the Rural Sanitary Authority, where the house is within the district of such authority.

That Act does not in this respect affect the Metropolis, but otherwise the 14 & 15 Vict. cap. 28, is repealed.

Now the 38 & 39 Vict. cap. 55, in sect. 80, provides for each authority, as follows:—

“Every Local Authority (*i.e.* every Urban and Rural Sanitary Authority) *shall* from time to time make By Laws—

- “(1.) For fixing and, from time to time, varying the number of lodgers who may be received into a Common Lodging House, and for the separation of the sexes therein; and,
- “(2.) For promoting cleanliness and ventilation in such houses; and,
- “(3.) For the giving of notices, and the taking precautions in the case of any infectious disease; and,
- “(4.) Generally for the well ordering of such houses.

It will be seen that there is no provision as to the inspection, because the Statute itself provides for the same in sect. 85. But the language of the Statute is peremptory not permissive.

There is no definition of a *Common Lodging House*, neither is there any restriction as to the annual value of the house as in the 10 & 11 Vict. cap. 34.

Secondly—as to ordinary Lodging Houses.

The 29 & 30 Vict. cap. 90, sect. 33, provides that—

On application to *one of Her Majesty's principal Secretaries of State* by the Nuisance Authority of the City of London, or any district or parish included

By Laws as
to Lodging
Houses.

within the Act for the better Local Government of the Metropolis, or of any Municipal Borough, or of any place under the Local Government Act, 1858, or any Local Improvement Act, or of any city or town containing, according to the census for the time being in force, a population of not less than 5000 inhabitants, *the Secretary of State* might as *he* might think fit, by notice to be published in the 'London Gazette,' declare that enactment to be in force in the district of the Local Authority, and thereupon the authority might make what were termed therein *Regulations* for certain specified matters.

The power of the Secretary of State under this clause was transferred to the Local Government Board by the 34 & 35 Vict. cap. 70, and the powers of the Nuisance Authorities mentioned in the clause out of the Metropolis were transferred by the 35 & 36 Vict. cap. 79. sects. 7 and 8 respectively, to the Urban and Rural Sanitary Authorities.

But as there was a limit in reference to the population of the place where the enactment could take effect, provision has been made to meet the necessities of places within the limit by the 37 & 38 Vict. cap. 89, which in sect. 49 enabled the Local Government Board at their discretion to cause the enactment to come into force in any district. It also to some slight extent enlarged the subjects for the By Laws.

The clauses of these Acts are repealed for the future, and the 38 & 39 Vict. cap. 55, sect. 90, provides as follows:—

"The Local Government Board may, if they think fit, by notice published in the 'London Gazette,' declare the following enactment to be in force within the district or any part of the district of *any* Local Authority, and from and after the publication of such notice such authority shall be

empowered to make By Laws for the following matters ; (that is to say)—

- “(1.) For fixing *and, from time to time, varying* the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family, *and for the separation of the sexes in a house so let or occupied :*
- “(2.) For the registration of houses so let or occupied :
- “(3.) For the inspection of such houses :
- “(4.) For enforcing *drainage*, and the provision of privy accommodation for such houses, and for promoting cleanliness and ventilation in such houses :
- “(5.) For the cleansing and lime-washing, at stated times, of the premises, *and for the paving of the courts and court-yards thereof ;*
- “(6.) *For the giving of notices and the taking of precautions in case of any infectious disease.*

The passages in italics are additions to the subjects enumerated in the 29 & 30 Vict. cap. 90, sect. 35.

In both Acts there is a saving that the enactment shall not apply to Common Lodging Houses, within the meaning of the Acts applicable thereto.

It is thus seen that out of the Metropolis the Urban and Rural Sanitary Authorities respectively have power to make By Laws in respect of Lodging Houses so soon as the notification above referred to has appeared in the ‘Gazette,’ but not before.

It may be here noticed that provision was made in the 37 & 38 Vict. cap. 89, sect. 45, for By Laws in regard to the Treatment and Lodging of Hop-pickers, who are found in great numbers in the counties where hops are grown. The clause, however, has been repeated with some modification in the 38 & 39 Vict. cap. 55, sect. 314, in the following terms:—

“Any Local Authority may, if they think fit, make By Laws for securing the *decent lodging and accom-*

By Law as
to Hop-pickers.

modation of persons engaged in Hop-picking within the district of such authority."

The Local Authority embraces both Urban and Rural Sanitary Authorities.

Now I proceed to other subjects, which partake of a character of Police organization.

The Towns' Police Clauses Act, 1847, 10 & 11 Vict. cap. 89, contains in sect. 68 the following provisions as to By Laws relating to *Hackney Carriages*:—

By Laws as
to Hackney
Carriages.

"The Commissioners may, from time to time (subject to the restrictions of this and the special Act), make By Laws for all or any of the purposes following (that is to say):

"For regulating the conduct of the proprietors and drivers of *Hackney Carriages plying* within the *prescribed distance* in their several employments, and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling :

"For regulating the manner in which the number of each carriage, corresponding with the number of its license, shall be displayed :

"For regulating the number of persons to be carried by such Hackney Carriages, and in what manner such number is to be shown on such carriage, and what number of horses or other animals is to draw the same, and the placing of check strings to the carriages, and the holding of the same by the driver, and how such Hackney Carriages are to be furnished or provided :

"For fixing the stands of such Hackney Carriages, and the distance to which they may be compelled to take passengers, not exceeding the prescribed distance :

"For fixing the rates or fares, as well for time as distance, to be paid for such Hackney Carriages within the prescribed distance, and for securing the due publication of such fares :

"For securing the safe custody and re-delivery of any property accidentally left in Hackney Carriages, and fixing the charges to be made in respect thereof."

The 38th sect. contained the definition of a *Hackney*

Carriage, with a proviso which exempted certain carriages, being stage-coaches duly licensed as such, and having thereon the proper numbered plates required by law; but as no such license nor any numbered plate is now required by law, the proviso has perhaps ceased to operate. If not (and the Law Officers of the Crown have recently given an opinion in the negative), besides other vehicles, it exempted "omnibuses" from the operation of the clause, *Cousin v. Stockbridge*, 30 J. P. 166.

A series of cases have been decided upon the words *plying for hire*, and may be properly consulted. They are:—*Case v. Storey*, 38 L. J. (M. C.) 115; L. R. 4 Ex. 319; *Clarke v. Stanford*, 40 L. J. (M. C.) 151; L. R. 6 Q. B. 357; *Allen v. Tonbridge*, L. R. 6 C. P. 481; 40 L. J. (M. C.) 197; *Skinner v. Usher*, L. R. 7 Q. B. 423; 41 L. J. (M. C.) 158; *Curtis v. Embery*, L. R. 7 Ex. 369; 42 L. J. (M. C.) 39; *Bateson v. Oddy*, 30 L. T. 712.

This Act confers the authority upon the Commissioners referred to, namely, the persons appointed under any Local Act to be Commissioners to execute the provisions of the General Act.

The Local Government Act, 1858 (21 & 22 Vict. cap. 98), in sect. 44, incorporated these provisions; and the 38 & 39 Vict. cap. 55, sect. 171, continues the same for Urban Sanitary Districts, and explains the words "within the prescribed distance" as meaning, for the purposes of that Act, "within any Urban District;" thus prescribing a definite limit for the jurisdiction of the authority over those carriages, and preventing the conflict which has arisen where two Urban Districts adjoin.

In connection with this provision it is well to refer again to *The Tramways' Act*, 1870, 33 & 34 Vict., cap. 78, already noticed in reference to the By Laws applicable to the use of the Tramway itself.

By Laws as to the carriages and drivers thereof on Tramways.

Sect. 48 of that Act gives to the Local Authority the like power of making and enforcing rules and regulations, and of granting licenses with respect to all carriages using the Tramways, and to all drivers, conductors, and other persons having charge or using the same, and to the standings for the same, as they are for the time being entitled to make, enforce, and grant with respect to Hackney Carriages and the drivers and other persons having charge thereof, and of the standings for the same in the streets and district of or under the control of the Local Authority.

As to Horses,
Mules, and
Asses.

Again, the 24 & 25 Vict. cap. 61, sect. 25, provided for By Laws in reference to horses, mules, or asses standing for hire, and in reference to pleasure-boats and persons in charge. But the enactment has been expanded by the recent Act, 38 & 39 Vict. cap. 55, sect. 172, in the following terms:—

“Any *Urban Authority* may license the proprietors, drivers, and conductors of horses, ponies, mules, or asses standing for hire within the district, in like manner and with the like incidents and consequences as in the case of proprietors and drivers of Hackney Carriages, and may make *By Laws*

“For regulating stands and fixing rates of hire, and as to the qualification of such drivers and conductors, and for securing their good and orderly conduct while in charge.

As to Plea-
sure Boats and
Vessels.

“Any *Urban Authority* may also license the proprietors of pleasure-boats and vessels, and the boatmen or other persons in charge thereof, and may make *By Laws*

“For regulating the numbering and naming of such boats and vessels, and the number of persons to be carried therein, and the mooring-places for the same, and for fixing rates of hire, and the qualification of such boatmen or other persons in charge, and for securing their good and orderly conduct while in charge.”

The vessel here referred to is evidently one in the nature of a pleasure-boat, but will doubtless include

a steam-boat which plies on the lakes, but not, it is presumed, such as plies for the conveyance of passengers from place to place.

Local Boards have also power to make By Laws in respect of *Mortuaries* and *Burial Grounds*. As to Mortuaries and Burial Grounds.

Thus the 11 & 12 Vict. cap. 63, sect. 171, enabled Local Boards of Health to provide Mortuaries, and to make By Laws for the management and charges for the use of the same, and for the regulation and charges for the interment of corpses received therein. This is re-enacted, but with more brevity, in the 38 & 39 Vict. cap. 55, sect. 141, in these terms:—"Any Local Authority *may*, and if required by the Local Government Board *shall*, provide and fit up a proper place for the reception of dead bodies before interment (in this Act called a 'Mortuary'), and may make *By Laws* with respect to the management and charges for use of the same; they may also provide for the decent and economical interment, at charges to be fixed by such *By Laws*, of any dead body which may be received into a Mortuary."

Here the power is conferred upon any Local Authority, and is not, therefore, restricted to a Board of Health as before.

Then when a Burial Board is a Local Board of Health, it may, from time to time, pass By Laws for the preservation and regulation of all burial-grounds within its limits: the Statute 24 & 25 Vict. cap. 61, sect. 21, being re-enacted in Part III. of Schedule V. to the Act 38 & 39 Vict. cap. 55, whereby indeed such By Laws are rendered subject to the provisions of that Act.

It must be admitted that the terms used in these enactments are very general and vague.

As to Public
Walks and
Recreation
Grounds.

The next subject is that of *Public Walks and Recreation Grounds*.

The 22 Vict. cap. 27, which enabled persons to make grants of land to Trustees to be held as open public grounds for resort and recreation of adults, and as play-grounds for children and youths, contained a provision for the appointment of Managers and Directors; and, in certain contingencies, required that the Charity Commissioners should frame a scheme.

Then sect. 6 enacted as follows:—

“The Managers and Directors may from time to time make and *enforce* any such By Laws, Orders, and Regulations for” the Management, Preservation, Disposition, and care of the said grounds, and the government of all persons using or frequenting the same, “as shall be approved of by the said Commissioners, and shall be in accordance with the conditions of the grant.”

The 23 & 24 Vict. cap. 30, enabled the Rate-payers of Parishes and Boroughs to purchase, lease, or acquire lands for the purpose of forming a public walk, exercise, or playground, and to levy rates for improving open walks, or placing seats or shelters from rain, and for other purposes. It referred to the Statute 9 & 10 Vict. cap. 74, relating to Baths and Washhouses, and enacted, that where it is adopted, the provisions of that Act for the purposes specified, applicable to the like cases where that Act is adopted, should take effect for the purposes of that Act, viz., all the provisions concerning

“The Authority by which, and the manner in which, the Act is to be carried into execution.”

It has been already shown that the 9 & 10 Vict. cap. 74, contained provisions for the enacting of *By Laws* by the Commissioners.

It was contended, therefore, that this power was incorporated in the present Act, and that the au-

thority having control over the grounds could make By Laws available for the same. It is obvious that the By Laws relating to Baths can hardly be suitable to such grounds, and doubts were entertained as to the correctness of the inference.

The Local Government Board consulted the Law Officers of the Crown, who gave their opinion in support of the contention, and the Board have consequently approved of By Laws suitable to the property.

The 11 & 12 Vict. cap. 63, sect. 74, enabled a Local Board to provide Public Walks and Pleasure Grounds, but it contained no provision as to By Laws. There was only the right to the powers which, as owners of property, the Board might exercise over the same, which are general and vague. But the 38 & 39 Vict. cap. 55, sect. 164, which re-enacts the provision, enables an Urban Authority to make By Laws for "the regulation of any such public walk or pleasure ground, and by such By Laws provide for the removal from such public walk or pleasure ground of any person infringing any such By Law by any officer of the Urban Authority or constable."

It may be here also noticed that

The 29 & 30 Vict. cap. 122, which provides for the improvement, protection, and management of Commons near the Metropolis, in sect. 6, enacts that a scheme for the establishment of Local Management with a view to the making of By Laws and Regulations for the prevention of nuisances and preservation of order thereon, may be made under the Act on a Memorial in that behalf presented to the Inclosure Commissioners by certain persons therein mentioned.

By Laws for
Metropolitan
Commons.

The scheme is to be made by the Commissioners provisionally, and is to be confirmed by Act of Parliament.

By Laws as
to Harbours,
Docks, and
Piers.

Then a series of provisions is contained in *The Piers, Harbours, and Docks Clauses Act*, 10 & 11 Vict. cap. 27, with reference to the management of *Piers, Harbours, and Docks*. Sect. 83 enacts, with respect to the By Laws to be made by the undertakers, as follows:—

“The undertakers may from time to time make such By Laws as they shall think fit for all or any of the following purposes (that is to say):

“For regulating the use of the Harbour, Dock, or Pier:

“For regulating the exercise of the several powers vested in the Harbour Master:

“For regulating the admission of vessels into or near the Harbour, Dock, or Pier, and their removal out of and from the same, and for the good order and government of such vessels whilst within the Harbour, or Dock, or at or near the Pier:

“For regulating the shipping and unshipping, landing, warehousing, storing, depositing, and removing of all goods within the limits of the Harbour, Dock, or Pier, and the premises of the undertakers:

“For regulating (*with the consent of the Commissioners of Her Majesty's Customs*) the hours during which the gates, or entrances, or outlets, to the Harbour, Dock, or Pier, shall be open:

“For regulating the duties and conduct of all persons, as well the servants of the undertakers as others (not being officers of Customs or Excise), who shall be employed in the Harbour, Dock, or Pier, and the premises of the undertakers:

“For regulating the use of fires and lights within the Harbour, Dock, or Pier, and the premises belonging thereto, and within any vessel being within the Harbour or Dock, or at or near the Pier, or within the prescribed limits (if any):

“For preventing damage or injury to any vessel or goods within the Harbour or Dock, or at or near the Pier, or on the premises of the undertakers:

“For regulating the use of the cranes, weighing machines, weights and measures belonging to the undertakers, and the duties and conduct of all weighers and meters employed by them:

“For regulating the duties and conduct of the porters and carriers employed on the premises of the undertakers, and fixing the rates to be paid to them for carrying any goods, articles, or things from or to the same:

Proceeding now to other subjects, it is to be noticed that in *The Mercantile Marine Act* (17 & 18 Vict. cap. 100), with reference to *Pilots*, it is enacted in sect. 332 that *every Pilotage Authority*¹ shall have power by By Law, made with the consent of Her Majesty in Council,

By Laws as
to Pilots and
Pilotage.

“To exempt the Masters of Ships or of any classes of Ships from being compelled to employ qualified Pilots, and to annex any terms or conditions to such exemptions, and to revise and extend any exemptions now existing by virtue of this Act or any other Act of Parliament, law, or Charter, or by usage, upon such terms and conditions and in such manner as may appear desirable to such authority.”

Then sect. 333 proceeded to enact that, subject to the provisions contained in the fifth part of the Act, every Pilotage Authority may by By Law, made with the consent of Her Majesty in Council, from time to time, do all or any of the following things within its districts (that is to say):

- “(1.) To determine the qualifications to be required from persons applying to be licensed as Pilots, whether in respect of their age, skill, time of service, character, or otherwise:
- “(2.) To make regulations as to the approval and licensing of Pilot-boats and ships, with power to establish and regulate Companies for the support of such boats and ships, and for a participation in the profits made thereby: the Companies so established to be exempt from the provisions of the Act passed in the 7 & 8 Vict. cap. 110:
- “(3.) To make regulations for the government of the Pilots licensed by them, and for insuring their good conduct, and their constant attendance to, and effectual performance of, their duty, either at sea or on shore:
- “(4.) To fix the terms and conditions of granting licences to Pilots and Apprentices, and of granting such Pilotage Certificates as hereinafter mentioned to Masters and Mates, and to make regulations for punishing any breach of such regulations as aforesaid committed by such Pilots

¹ By the Interpretation Clause the term “Pilotage Authority” shall include all bodies and persons authorized to appoint or license Pilots, or to fix or alter rates of Pilotage, or to exercise any jurisdiction in respect of Pilotage.

44 OF THE AUTHORITY FOR MAKING THE BY LAW.

or Apprentices, or by such Masters and Mates, by the withdrawal or suspension of their licences or certificates, as the case may be, or by the infliction of penalties to be recoverable summarily before two Justices, so that no such penalty be made to exceed the sum of *twenty pounds*, and so that every such penalty be capable of reduction at the discretion of the Justices by whom the same is inflicted :

- “(5.) To fix the rates and prices or other remuneration to be demanded and received for the time being by Pilots licensed by such authority, or to alter the mode of remunerating such Pilots, in such manner as such authority may, *with such consent as aforesaid*, think fit, so that no higher rates or prices be demanded or received from the Masters or owners of ships in the case of the Trinity House, than the rates and prices specified in the Table marked U. in the Schedule thereto; and in the case of all other Pilotage Authorities, than the rates and prices which might have been lawfully fixed or demanded by such Pilotage Authorities respectively, under any Act of Parliament, Charter, or Custom, in force immediately before the commencement of this Act (*i.e.*), May 1, 1855 :
- “(6.) To make such arrangements with any other Pilotage Authority for altering the limits of their respective districts, and for extending the powers of such other authority or the privileges of the Pilots licensed by such other authority, or any of them to all or any part of its own district, or for limiting its own powers or the privileges of its own Pilots or any of them, or for sharing the said last-mentioned powers and privileges with the said other authority and the Pilots licensed by it, or for delegating or surrendering such powers and privileges or any of them to any other Pilotage Authority, either already constituted or to be constituted by agreement between such Authorities, and to the Pilots licensed by it, as may appear to such Pilotage Authorities to be desirable for the purpose of facilitating navigation or of reducing charges on shipping :
- “(7.) To establish, either alone, or in conjunction with any other Pilotage Authority or Authorities, funds for the relief of superannuated or infirm qualified Pilots, or of their wives, widows, or children, or to make any new regulations with respect to any funds already applicable to the above purposes or any of them, with power to determine the amount, manner, time, and persons (such service to be in the service of such Pilotage Authority) to, and in which, and by, and upon whom, the contributions in support of such existing or future funds may be made or levied ; and further, to declare the persons or class of persons (such persons or class of persons being confined to men in the

service of such Pilotage Authority, their wives, widows, or children) entitled to participate in the benefits of such existing or future funds, and the terms and conditions upon which they are to be so entitled."

The Legislature has given much attention to the damages resulting from the storage of dangerous substances in the following manner:—

The Petroleum Act, 1871 (34 & 35 Vict. cap. 105), requires in sect. 4 that every Harbour Authority (i. e. any persons or person being, or claiming to be, proprietors or proprietor of, or entrusted with the duty, or invested with the power of improving, maintaining, or managing any harbour), shall frame and submit for confirmation to the Board of Trade By Laws to Petroleum.

"For regulating the place and places at which ships carrying *Petroleum* (to which that Act applies), "are to be moored in the harbour to which such authority has jurisdiction, and are to load their cargo, and for regulating the time and mode of, and the precautions to be taken on such landing."

If no By Law be made, the Board of Trade may require it to be made, and in default may make a By Law, which shall have the same effect.

This Act is, however, confined to Petroleum on board ship, or landed in some harbour. It does not apply to this article stored in warehouses or other premises.

The Act of the last Session, *The Explosives Act* (38 & 39 Vict. cap. 17), contains provisions for the making of several series of By Laws in reference to the conveyance and storage of *Gunpowder*. By Laws as to Gunpowder in Harbours.

Thus sect. 34 requires every Harbour Authority (and the Act contains a definition of this term), with

the sanction of the Board of Trade, to make By Laws for regulating the *conveyance, loading, and unloading of Gunpowder* within the jurisdiction of the said authority, and in particular for declaring or regulating all or any of the following matters within the jurisdiction of the said authority, namely :

- “(1.) Determining the notice to be given by ships and boats conveying, loading, or unloading Gunpowder as merchandise within the said jurisdiction ; and
- “(2.) Regulating the navigation and place of mooring of such ships and boats ; and
- “(3.) Regulating, subject to the general rules with respect to packing in this Act contained, the mode of stowing and keeping Gunpowder on board any such ship or boat, and of giving notice by brands, labels, or otherwise of the nature of the package containing the Gunpowder and
- “(4.) Regulating the description, construction, fitting up, and licensing of the ships, boats, or carriages to be used for the conveyance of Gunpowder, and the licensing and dress of the persons having charge thereof ; and
- “(5.) Prohibiting or subjecting to conditions and restrictions the conveyance of Gunpowder with any explosive or any articles or substances, or in passenger ships, boats, trains, or carriages ; and
- “(6.) Prohibiting in cases where the loading or unloading of Gunpowder within the jurisdiction of such authority appears to be specially dangerous to the public such loading or unloading, and fixing the places and times at which the Gunpowder is to be loaded or unloaded, and the quantity to be loaded or unloaded or conveyed at one time, or in one ship, boat, or carriage ; and
- “(7.) Regulating the mode of and the precautions to be observed in conveying any Gunpowder, and in the loading or unloading any ship, boat, or carriage conveying Gunpowder as merchandise, and the time during which Gunpowder may be kept during such conveyance, loading, or unloading ; and
- “(8.) Fixing the time at which lights or fires are to be allowed or not allowed on board such ships or boats, as before mentioned, or at which a constable or officer of the Harbour Authority is to be on board them ; and
- “(9.) Providing for the publication and supply of copies of the By Laws ; and
- “(10.) Enforcing the observance of this Act both by their own servants and agents, and also by other persons when within the said jurisdiction ; and

- "(11.) Generally for protecting, whether by means similar to those above mentioned or not, persons or property from danger."

Then again, sect. 35 provides that every *Railway Company* and every *Canal Company* over whose railway or canal any Gunpowder is carried, or intended to be carried, shall, with the sanction of the Board of Trade, make By Laws for regulating the conveyance, loading, and unloading of such Gunpowder on the railway or canal of the Company making the By Laws, and in particular for declaring and regulating all or any of the following matters in the case of such railway or canal (that is to say):

On Railways
and Canals.

- "(1.) Determining the notice to be given of the intention to send Gunpowder for conveyance as merchandise on the railway or canal; and
- "(2.) Regulating, subject to the general rules with respect to packing in this Act contained, the mode of stowing and keeping Gunpowder for conveyance, and of giving notice by brands, labels, or otherwise, of the nature of the package containing the Gunpowder; and
- "(3.) Regulating the description and construction of carriages, ships, or boats to be used in the conveyance of Gunpowder; and
- "(4.) Prohibiting or subjecting to conditions and restrictions the conveyance of Gunpowder with any explosive, or with any articles or substances, or in passenger trains, carriages, ships or boats; and
- "(5.) Fixing the times and places at which the Gunpowder is to be loaded or unloaded, and the quantity to be loaded or unloaded, or conveyed at one time, or in one carriage, ship, or boat; and
- "(6.) Determining the precautions to be observed in conveying Gunpowder, and in loading and unloading the carriages, ships, and boats used in such conveyance, and the time during which the Gunpowder may be kept during such conveyance, loading, and unloading; and
- "(7.) Providing for the publication and supply of copies of the By Laws; and
- "(8.) Enforcing the observance of this Act both by their servants and agents, and also by other persons, when on the canal or railway of such Company; and
- "(9.) Generally for protecting, whether by means similar to those above mentioned or not, persons and property from danger."

Such By Laws, when confirmed by the Board of Trade, shall apply to the railway, canal, agents, and servants of the Company making the same, and to the persons using such railway or canal, or the premises connected therewith and occupied by or under the control of such Company.

On Wharves
and in Docks.

Then, lastly, it is enacted in sect. 36 that the occupier of every wharf or dock on or in which Gunpowder is loaded or unloaded (if such loading or unloading is not otherwise subject to any By Laws under this Act) *may*, and if so required by the Secretary of State *shall*, from time to time with the sanction of the Secretary of State, make By Laws for regulating the loading and unloading of Gunpowder on or in such wharf or dock, and in particular for declaring or regulating all or any of the matters which can be declared or regulated in the case of any wharf or dock within the jurisdiction of a Harbour Authority by By Laws made by such authority in pursuance of this Act.

If the occupier, when required, fail within three months to comply to the satisfaction of the Secretary of State, he may make such By Laws which shall have the same effect as if made by the occupier.

It is then provided that, "When, by reason of a wharf being a public wharf, or otherwise there is no occupier thereof, or the occupier thereof is unknown, the Secretary of State may make By Laws with respect to such wharf in like manner as if the occupier had failed to comply with his requisition: Provided that where such wharf abuts on any harbour, canal, or railway, the Harbour Authority or Canal or Railway Company shall have the same power, and if so required by the Secretary of State, shall be under the same obligation to make By Laws under this Section for such wharf as if they were the occupiers thereof."

The next subject is that of *the Protection of Nurse Children*. For the Protection of Nurse Children.

The 35 & 36 Vict. cap. 38, provides for the protection of infants intrusted to persons to be nursed or maintained, for hire or reward in that behalf. It constitutes a Local Authority to execute the Act, viz., in Counties the Justices in Petty Sessions, in the Metropolis the Metropolitan Board of Works, in the City of London the Common Council, and in Boroughs the Council.

Sect. 3 requires the Local Authority to cause a Register to be kept, in which shall be entered the name of every person applying to register any house for the purposes of the Act, and the situation of every such house.

And the Local Authority shall from time to time make *By Laws* for *fixing the number* of infants who may be received into each house so registered.

Then, as to provisions relating to the qualification of *Medical Practitioners and Chemists*, I must observe that the 36 & 37 Vict. cap. 55, enables the University of London, in conducting examinations, in co-operation with others, for qualifications to be registered under the Medical Act (21 & 22 Vict. cap. 90) to make a *By Law* that no person shall obtain a degree from that University unless he shall have passed such examination for qualification to be registered and complied with such conditions relating thereto as may be agreed upon between the co-operating bodies. For the Qualification of Medical Practitioners and Chemists.

It will be remembered that reference is made above, in p. 11, to the provisions contained in the *By Laws* of the College of Physicians in regard to the admission of members of that body.

This Act has been followed by the 38 & 39

Vict. cap. 43, which in sect. 1 enables the Royal College of Surgeons in England to prescribe, by a By Law, that "no person shall become a Fellow, or Member, or Licentiate in Midwifery of the said College, unless he shall have passed an examination as therein provided for."

Then the Pharmaceutical Society, which is established for the purpose of securing the supply of competent *Chemists and Druggists*, is empowered by the 15 & 16 Vict. cap. 56, sect. 2, to alter and amend the By Laws made and established under a Charter of Incorporation granted to them in 1843, and to make and establish such new and additional By Laws as they should deem proper and necessary for the purposes contemplated by the Charter or by that Act. It appears also from the Act that the By Laws may provide "for the appointment of persons to conduct the examinations, for the subjects of examination, and for the fees to be paid for the same."

By Laws in regard to Elementary Education of Children.

But one of the gravest and most important subjects of Legislation, namely, that of Education, has been referred to Local Authorities to deal with by By Laws. Thus *The Elementary Education Act* (33 & 34 Vict. cap. 75), in sect. 74, enacts that every School Board may from time to time, with the approval of the Education Department, make By Laws for all or any of the following purposes:—

- "(1.) Requiring the parents of children of such ages, not less than five years nor more than *thirteen* years, as may be fixed by the By Laws, to cause the children (unless there is some reasonable excuse) to attend school:
- "(2.) Determining the time during which children are so to attend school;
- "Provided that no such By Law shall prevent the withdrawal of any child from any religious observance or instruction in religious subjects,

"Or shall require any child to attend school on any day exclusively set apart for religious observance by the religious body to which his parent belongs,

"Or shall be contrary to anything contained in any Act for regulating the Education of children employed in labour.

"(3.) Providing for the remission or payment of the whole or any part of the fees of any child where the parent satisfies the School Board that he is unable from poverty to pay the same ;

"(4.) Imposing penalties for the breach of any By Laws :

"(5.) Revoking or altering any By Law previously made."

But it is provided that any By Law under this section requiring a child between *ten* and *thirteen* years of age to attend school, shall provide for the total or partial exemption of such child from the obligation to attend school, if one of Her Majesty's Inspectors certifies that such child has reached a *standard* of Education specified in such By Law.

It is then enacted that any of the following reasons shall be a *reasonable excuse*, namely :—

(1.) That a child is under *efficient instruction* in some other manner :

(2.) That the child has been prevented from attending school by *sickness* or any *unavoidable cause* :

(3.) That there is no public elementary school open which the child can attend, within such distance not exceeding *three miles*, measured according to the nearest road from the residence of such child as the By Laws may prescribe.

The Fisheries of this country are so important, that many Statutes have been made for their protection. One kind of Fishery, namely, *the Salmon Fishery*, has been made the subject of Special By Laws. The 36 & 37 Vict. cap. 71, sect. 39, enacts that, subject to the provisions thereafter contained for the *confirmation* and *publication* of By Laws, a Board of

By Laws relating to the Salmon Fisheries.

Conservators may make By Laws for the better execution of "The Salmon Fishery Acts, 1861 to 1873," and for the better protection, preservation, and improvement of the Salmon Fisheries within their district, and alter the same from time to time for all or any of the following purposes (that is to say) :

- "(1.) To alter the commencement and termination of the annual close season as to the whole or part of the district, so that such close season, when so altered, shall not be less than one hundred and fifty-four days, for all modes of Salmon fishing, except with rod and line, and shall not commence later than the 1st of November in each year, and as regards fishing with rod and line, so that such close season shall not be less than ninety-two days, and shall not commence later than the 1st of December in each year :
- "(2.) To alter the commencement and termination of the weekly close season as to the whole or part of a district, so that such season shall not commence before six o'clock on Friday afternoon, and not terminate earlier than midnight on the Sunday following, nor continue later than twelve o'clock on the following Monday at noon, such weekly close time in no case to exceed forty-eight hours :
- "(3.) To determine the length, size, and description of nets, and the manner of using the same (not being fixed engines) for taking Salmon :
 "Provided that no By Laws made under the authority of this section shall limit the length of a hang net, or limit the length of a draft net so as to be less than two hundred yards :
- "(4.) To determine the minimum size of the mesh of nets for catching Salmon that shall be lawfully used within the district, so that such mesh shall not be less than one and a half inch from knot to knot, and so that no person shall be compelled to use a mesh larger than two and a half inches, measured when wet :
- "(5.) To determine the form of licences and the manner in which licences shall be issued, provided that different forms be used for licences for fishing in public or common and in private fisheries :
- "(6.) To vary the rate of licence duty in different parts of the district, in respect of the length or size of the net used, so that such duty shall not exceed the sum mentioned in the third Schedule hereto :
- "(7.) To determine what marks, labels, or numbers shall be attached to licensed nets, or painted upon or affixed to boats, coracles, or other vessels used in fishing :
- "(8.) To prohibit the use of nets within a certain distance of the mouth of any river, and of the point of confluence of rivers

in any part of the district (not being a several fishery), and to erect and fix posts, buoys, and landmarks to indicate such distances respectively: By Laws relating to the Salmon Fishery.

- "(9.) To determine the time during which it shall be lawful to use a gaff in connection with a rod and line:
- "(10.) To determine when gratings shall be placed during certain times of the year across the head and tail race of mills and across any artificial channel, so, however, as not to diminish the supply of water to any mill, nor to interfere with the passage of vessels, or otherwise injure any inland navigation or lock, but so that the provisions of the thirteenth section of the Salmon Fishery Act, 1861 (24 & 25 Vict. cap. 109), shall not be affected:
- "(11.) To regulate during the annual and weekly close seasons the use within any river of nets for fish other than Salmon, when such use at such times is prejudicial to the Salmon Fisheries:
- "Provided that nothing in this sub-section contained shall authorize anything to be done which shall affect any part of any river in which part there is a several right of fishery, or any river or part of any river where the breadth at low water is greater than six miles:
- "(12.) To prohibit the use in any inland water of any net, except a landing-net or a net for taking eels, between the expiration of the first hour after sunset and the last hour before sunrise."

Sect. 40 enables the Board of Conservators to make the By Law to apply to the whole or any part of their district, and to the whole or any part of the year, and to vary this from time to time.

Again, the *River Thames* is of such Imperial importance, that it must be deemed right to state that the Conservators of that River are empowered by 27 & 28 Vict. cap. 113, sect. 36, and 29 & 30 Vict. cap. 89, sect. 11, from time to time to make regulations as to "the mode of conducting elections under those Acts." By Laws relating to the River Thames.

And by sect. 36 of the former Act they can make By Laws "to regulate the proceedings of any public or private inquiry to be instituted by them."

By sect. 64 they can make By Laws for "the registering and regulating of Bumboats, that is to say, Craft, and for the purposes of dealings in pro-

visions, liquors, stores, or other goods with seamen or others employed on or about the River Thames, and of the persons working or using such Bumboats."

And by sect. 65 they can also make By Laws for the following purposes:—

"For the protecting, preserving, and regulating of the fisheries in the River Thames, and the preservation of the fish therein :

"For the registering and regulating of boats or vessels on the River Thames used for fishing by persons following the business of fishermen, or kept to be let to hire for fishing, and the governing persons following the business of fishermen, and using or working such boats or vessels for fishing, and of persons keeping such boats or vessels for letting to hire for fishing :

"For the prohibition of the use of nets and apparatus improper to be used for taking fish :

"For determining the times during which the taking of any particular or specified kinds of fish shall not be practised :

"For determining and regulating the duties of water bailiffs or other proper officers to be appointed by the Conservators to carry such By Laws into execution."

And by sect. 68 they may from time to time, by By Law, appoint Tolls to be levied on Steam or other Passage Vessels in all cases or in certain cases to be defined by the By Law, according to the number of the passengers landed at or embarked from any pier or landing-place.

Lastly, I think certain special provisions of a different character from those hitherto described, namely, such as are of a more private nature and more limited operation, should be here introduced.

Special Rules
in Alkali
Works.

The 26 & 27 Vict. cap. 124 (*The Alkali Act*, 1853), in sect. 13, enacts that the owner of any Alkali Works may, with the sanction of the Board of Trade (now of the Local Government Board), make, alter, or

repeal *Special Rules* for "the guidance of such of his workmen as are employed in any process causing the evolution of Muriatic Acid Gas, or whose duty it is to attend to the apparatus and to the condensation of that Gas."

Again, the Acts *for the Regulations of Mines*, Special Rules in Mines. 35 & 36 Vict. cap. 76, which relates to Coal Mines, and cap. 77, which relates to Metalliferous Mines, contain provisions in regard to *Special Rules*. They are in sect. 52 of the former and sect. 24 of the latter. The objects and purport of both are the same, but the language slightly varies. These *Special Rules*, as they are termed, are to be made

"for the conduct and guidance of the persons acting in the management of the Mine or employed in or about the same as under the particular state and circumstances of each Mine may appear but calculated to prevent dangerous accidents, and to provide for the safety and proper discipline of the persons employed in or about the Mine."

(4). By Custom.

I have to notice that the last, though in one sense the earliest, authority for making By Laws is *Custom*, Custom affords authority for By Laws. which is presumed to depend upon a legal sanction given by the Legislature of the country in remote antiquity.

Spelman, in his Glossary, under the word *Bellagines*, states that three kinds of By Laws are found in this country, namely; first, those which are enacted by the Homage in the Court Baron; secondly, those enacted in the Leet, or view of Frank-pledge by the suitors thereof; thirdly, those enacted in Towns or villages by the inhabitants or their neighbours.

These sources all resolve themselves into customary origins.

Accordingly, in 5 Co. 63, it is laid down that a custom is required in cases where any body, Cor-

porate or otherwise, having no Charter or Statutory power, makes a By Law for their own profit, such as is the case where Commoners regulate their Common of pasture.

In Hob. 212. (see also Moore's argument in *Dave-
nant v. Hurdis*, Moo. 584), it is stated that the Tenants of a Manor may for their own Common or the like make By Laws.

This is clearly a customary right.

Again: in the same case it is alleged that there may be a prescription for the same purpose in a Court Leet. This is supported by *Ld. Cromwell's Case*, Dyer 322; and *Franklin v. Cromwell*, Dal. 95; *The Earl of Exeter v. Smith*, 2 Keb. 367; Cart. 177.

It is not surprising, therefore, to find that in *Lambert v. Thornton*, 1 Lord Raym. 91, a By Law made by the Homage of a Court Baron as to the appointment of a Field Reeve, namely, an officer to look after the good order of the Common out of the inhabitants of the Manor, was held to be valid.

In Courts
Baron and
Courts Leet.

There are some authorities which carry the authority of the Court Baron and the Court Leet a little farther, though these powers are now seldom enforced.

Thus, in *Scarling v. Criett*, Mo. 75, it is admitted that the tenants of a manor, and other persons residing and inhabiting within the manor, might by custom make By Laws to bind the tenants and other occupiers of tenements therein *for their good government, and for the preservation of the herbage and plants in the Common*, and impose fines for breach thereof, to be levied by distress.

It is also found that Lea, C. J., in the case between *the Bricklayers and the Plasterers*, Palm. 396; 2 Roll. R. 392, said that the Court Leet could make By

Laws not only in reference to husbandry, but also to *trades and mysteries*.

In Lane 55 (*Temp. Jac. 1.*) there is notice of a By Law made in a township to prohibit an inhabitant from receiving as his tenant a poor man chargeable to the parish, and it appears to have been admitted that the Leet might by custom make such a By Law.

Such powers, if still unabrogated, are now so obsolete that no means would exist of enforcing them at the present day.

In confirmation of the proposition of Spelman as regards the third class of cases, reference may be made ^{In other places.} to Coke's Comm. on Litt. sect. 165. He there states—

“But an upland Town (*i.e.* neither City nor Borough) may allege a custom to make By Laws for the reparation of the Church, the well-ordering of Commons, and such like things.”

This is adopted by Viner in his ‘Abridgement,’ Tit. *Parishioners*, where it is said, “Parishioners may make By Laws to mend the Highways, and to make banks to keep out the sea, and for repairing the Church, and making a bridge,” &c.

And, farther, where Corporations claimed to make By Laws in respect of matters not incidental to their existence, as provided for in the Charter of Incorporation or by any Statute, reliance was based on custom. ^{Customs as to Trading.}

Thus: By Laws to restrain the trading of persons, such as where Non-Freemen were prevented from trading in particular Boroughs, could only be supported by proof of ancient custom established therein, which pre-supposed a special Statute granted at some

remote period to authorize it.—*Hesketh v. Braddock*, 3 Burr. 1856.

I shall have occasion to notice hereafter many cases of By Laws coming within this class which could only be supported by pre-existing custom.

In *Cocksedge v. Fanshaw*, 1 Doug. 133, Lord Mansfield in the course of his judgment in the case of a claim of exemption from certain duties payable by custom to the City of London, suggested that there might have been a By Law made after the grant of the duties, by which By Law, for the purpose of encouraging factors to become free of the City, and by that means introducing the trade of the article, the Corporation might have given them, when Freemen, all the duties arising on the article consigned to them. He said that there would be nothing impossible in this, and according to his argument there would have been nothing illegal.

Stannary
Convocations.

I may here mention that in Cornwall there were ancient assemblies, termed *Stannary Convocations* or *parliaments*, which claimed to make Statutes or Laws for the rule and government of the miners in that district. Some of their rules or ordinances were simply declarations of the customs prevailing in the district, but others contained regulations as to the modes of working and as to the conduct of the persons engaged therein. They appear to have depended for validity upon the ancient customs of the county.—See *Rogers v. Brunton*, 10 Q. B. 26.

Extent of
Customary By
Law.

Now, in regard to the extent of the operation of the By Law dependent upon a custom, it is to be observed that where the custom in any Borough extended to the Liberties or suburbs of the Borough, which it might do, a By Law made to enforce the

custom in such liberty or suburb was held to be valid.—*Harris v. Wakeman*, Say. 254.

Then if a By Law depend upon a custom, and that custom is illegal, the By Law is not good, and cannot make an Act good which is only supported by the custom. Illegal Custom renders By Law illegal.

Thus where it was alleged in a Borough in which no express day was appointed by Charter for the election of burgesses, that by custom a meeting might be summoned by the ringing of the bell, and that by a non-existing By Law it had been enacted that the meeting for this purpose should be summoned in this manner, the Court of King's Bench held that the custom was not a good one, and in like manner that the By Law could not be upheld.—*K. v. Hill*, 4 B. & C. 426.

It is farther to be noticed that no usage, however long, will give validity to a By Law which in itself is illegal. In *Hoblyn v. The King*, 5 Bro. P. C. 211, the usage upon a By Law determined to be illegal had existed for 200 years, yet the By Law was set aside; and in *K. v. Giniver*, 6 T. R. 736, Ashurst, J. says expressly of a By Law which the Court held to be bad—"The By Law has not acquired any force from the length of time since which it was made." Effect of Usage.

A customary right to make By Laws may be confirmed by Statute, as was the case in the City of London. In numerous cases where the City sought to enforce their By Laws they alleged the ancient custom, and that the customs of the City had been confirmed by many Statutes. One of the earliest cases is that of *the Chamberlain of London's Case*, 3 Leon. 264; 5 Co. 63. Confirmation of Custom by Statute.

But it must be understood that although a custom may be enforced by a By Law, it cannot be abrogated or superseded by a By Law.

Thus a custom existed in the City of London that when the inhabitants of any ward returned a person By Law cannot abrogate Custom.

to be Alderman whom the Court of Mayor and Aldermen adjudged to be unfit for the dignity of the office, the Mayor and Aldermen could elect a Freeman to be the Alderman. A By Law was made that at the wardmote one able and sufficient citizen should be returned to that Court, which person so elected should be admitted to the office. It was held that this By Law did not abrogate the custom.—*The K. v. Johnson*, 6 C. & Fin. H. L. C. 41. It must be admitted, however, that the Lords who decided the case did not consider that the By Law was inconsistent with the custom.

I may here cite the remark of Lord Coke in 2 Inst. 664, where he says that “a custom once reasonable and tolerable, if after it become grievous and not answerable to the reason upon which it was grounded, yet is to be taken away by Act of Parliament; for an inheritance once fixed cannot be taken away but by Parliament.”

Who can
make a By
Law.

I have thus endeavoured to set forth the different authorities upon which the power to make a By Law depends, and from the details it will be seen who can make it.

Repeal and
alteration of
By Laws.

Having thus discussed the general question as to the authority under which a By Law can be made, and the extent of its operation, I must make some remarks as to *the Repeal of the By Law*.

The same authority which makes a By Law may subsequently repeal it absolutely, or substitute another for it.—*Newling v. Francis*, 3 T. R. 198; *The K. v. Ashwell*, 12 East. 22; *K. v. Westwood*, 4 B. & C. 806.

But this is clearly a question for the governing Body to determine in the exercise of its own judgment.

Therefore the Court of Queen's Bench refused to grant a Mandamus to the Mayor of a Corporation to require him to submit to the burgesses assembled in their guild a proposal to repeal a By Law, though it was alleged that by the Charter By Laws and ordinances might and had formerly been made at such guilds.—*E. p. Garret*, 3 B. & Ad. 252.

It is, however, to be observed, that many of the modern Statutes which enable authorities to make By Laws, contain special power for the Repeal, revocation, or alteration of them. Statutory provisions.

This provision will be found in The Companies Clauses Consolidation Act, 8 & 9 Vict. cap. 16, sect. 124, though now repealed by 25 & 26 Vict. cap. 89.

The Commissioners Clauses Act, 10 & 11 Vict. cap. 16, sect. 96.

The Towns Improvement Clauses Act, 10 & 11 Vict. cap. 34, sect. 200.

The Baths and Washhouses Act, 9 & 10 Vict. cap. 74, sect. 34.

The Market and Fairs Clauses Act, 10 & 11 Vict. cap. 14, sect. 42.

The Town Police Clauses Act, 10 & 11 Vict. cap. 89, sect. 71.

The Public Health Act, 11 & 12 Vict. cap. 63, sect. 115, which also applied to the later Sanitary Acts, and is repeated in the 38 & 39 Vict. cap. 55, sect. 182.

The Elementary Education Act, 33 & 34 Vict. cap. 75, sect. 74.

The Salmon Fishery Act, 36 & 37 Vict. cap. 71, sect. 39.

The Petroleum Act, 34 & 35 Vict. cap. 105, sect. 4.

The Explosive Substances Act, 38 & 39 Vict. cap. 17, sects. 36, 37, & 38.

The Alkali Act, 26 & 27 Vict. cap. 124, which enables the owner of any *Alkali Work* to make Special Rules in sect. 13, enables him to alter or repeal them. A similar provision is in the *Mines Regulations Acts*, 35 & 36 Vict. cap. 76, sect. 55; and cap. 77, sect. 27.

It appears to have been considered that the Statutory power to make By Laws was to be exercised as any other power, and that, without express sanction, no power would exist to interfere with what had been done in execution of the power by subsequent action. Whereas when the power of making By Laws is implied or depends upon custom, the implication or the custom includes a power of repeal, alteration, or revocation.

It seems to me that upon this principle it was held that the By Laws or Statutes prescribed by the founder of an Eleemosynary body cannot be altered or repealed by himself or his heirs unless he has reserved power to do so in those By Laws. —*Philips v. Bury*, Skin. 513. Mr Kyd, in his *Law of Corporations*, Vol. ii., Chapter on By Laws, takes a different view, and states that the Eleemosynary Body having accepted his By Laws, his power to alter them is stayed, unless they consent to the alteration. This, however, appears to me to amount to the creation of a new power to make By Laws.

I must notice the remarkable provision in the Explosive Substances Act, 38 & 39 Vict. cap. 17, sect. 36, which enacts that By Laws made by the occupier of a Wharf or Dock, on or in which Gunpowder is loaded or unloaded, shall, *if required by the Secretary of State*, be rescinded, altered, or added to By Laws made by the occupier. But if he fail to do this, the Secretary of State may make the requisite By Law.

It will be seen above that the Court of Queen's

Bench refused to grant a Mandamus to a Corporation to procure the repeal of a By Law.

But although a By Law may be repealed by the authority which made it, it cannot be set aside by usage. Hence in *Sills v. Brown*, 9 Carr. & P. 604, where a By Law relative to the navigation of the Thames had been given in evidence, *Coleridge, J.*, refused to allow evidence to be given to show that in practice the By Law had been contravened.

Not set aside by Usage.

Perhaps where an ancient By Law is relied on, it might be competent to show that by long subsequent adverse or inconsistent usage a presumption of a rescinding or repealing of the By Law arose.

In *Shaw v. Furze*, 1 L. J. R. (N. S.) Q. B. 216, it was sought to show that a general By Law made by the Corporation of London did not extend to an isolated part of the City by reason of non-user therein, but the attempt did not succeed.

Where a By Law made by due authority could not, as it was presumed, be vacated by a Court of Law, the Legislature has in some few cases intervened.

By Laws revoked by Public Statutes.

Accordingly the Statute 3 Hen. 7, cap. 9, set out a great grievance, caused by an ordinance made by the Corporation of the City of London, whereby it was enacted that no freeman or citizen of the said City should go to any fair or market out of the said City with wares or merchandise to sell or barter under heavy penalty; and after reciting the great mischief of such an ordinance, enacted that every such citizen and freeman might carry his wares to any fair or market in the realm, and that the said ordinance should be void and of none effect.

This was followed by another Statute in the same reign, 12 Hen. 7, cap. 6, which also recites with an

elaborate statement of complaint an ordinance and constitution made by "the Fellowship of the Mercers, and other Merchants and Adventurers, dwelling and being free of the City of London," that no Englishman resorting to certain foreign Marts in the dominions of the then Archduke of Burgundy, should buy or sell any goods or merchandise there, unless previously he compounded and made fine to the Fellowship at their pleasure, under a penalty of forfeiture to them of the goods bought or sold.

The mischiefs and the enormity of the grievance arising out of this ordinance were set out at length, and the Statute then enacted "that every Englishman should have free passage to these foreign marts without being liable to pay more than 10 *marks sterling*," and imposed a penalty of £20 upon any person who exacted a greater penalty.

Then by the 19 Hen. 7, cap. 7, which required Corporate bodies to submit their By Laws for confirmation as will be shown hereafter, it was enacted "that none of *the same* bodies corporate take upon themselves to make any Acts or ordinances to restrain any person or persons to sue to the King's highness or to any of his Courts for due remedy to be had in their causes, ne put ne execute any penalty or punishment upon any of them for any such suit, to be made upon pain of forfeiture of £40 for every time that they do the contrary."

In furtherance of this Statute, the 22 Hen. 8, cap. 4, prevented the making of any ordinance and By Law to impose heavy fees upon the admission of apprentices into their Companies above the sum of 6s. 8d.; and the 28 Hen. 8, cap. 5, prevented such Corporate bodies from restraining apprentices or journeymen by bond or oath from trading after the expiration of their term of service.

Avoidance
by Statute.

Again, when a trading Company had made a By Law limiting the amount of work to be done

by the members of the Company which had been held valid by the Court of King's Bench, a Statute was passed to make the By Law null and void, and to prevent the Company from making such a By Law in future, as well as any By Law to limit the number of apprentices to be taken by any member of their Company. See 20 Chas. 2, cap. 6.

But the most general provision which has been made by Statute is contained in the 5 & 6 Will. 4, cap. 76, sect. 14, in the following terms:—

“Whereas, in divers cities, towns, and boroughs a certain custom hath prevailed, and certain *By Laws* have been made, that no person not being free of a city, town, or borough, or of certain guilds, mysteries, or trading companies within the same, or one of them, shall keep any shop or place for putting to show or sale any or certain wares or merchandize by way of retail or otherwise; or use any or certain trades, occupations, mysteries, or handicrafts for hire, gain, or sale within the same; be it enacted that, notwithstanding any such custom or *By Law*, every person in any borough may keep any shop for the sale of all lawful wares and merchandises by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft for hire, gain, sale, or otherwise within any borough.”

The By Law is not distinctly repealed, but it is made inoperative.

Lastly: the Public Health Act, 1875, 38 & 39 Vict. cap. 55, sec. 315, provides that

“Any By Law made by any Sanitary Authority under the Sanitary Acts which is inconsistent with any of the provisions of this Act shall, so far as it is inconsistent therewith, be deemed to be repealed.”

When authority is given by any Statute to make a By Law, and the Statute is subsequently repealed, the By Law ceases to be operative. If it be intended to re-enact the Statute, it is necessary to keep

By Laws
kept in force
by repealing
Acts.

the By Law in force by express provision. Thus the 21 & 22 Vict. cap. 98, having repealed some of the clauses in the 11 & 12 Vict. cap. 63, which enabled Local Boards to make By Laws, in sect. 9 enacted that all By Laws made under any section of the 11 & 12 Vict. cap. 63, should continue in force until the By Laws authorized by that Act should be brought into operation.

And the Public Health Act, 1875, 38 & 39 Vict. cap. 55, in sect. 326, enacts that "All By Laws duly made under any of the Sanitary Acts by that Act repealed, and not inconsistent with any of the provisions of that Act, shall be deemed to be *By Laws under that Act.*"

A question has arisen as to the power to make By Laws by Rural Sanitary Authorities under an order of the Local Government Board issued prior to the passing of this Act.

By sect. 313 the provisions of the Public Health Act, 1875, are to be substituted in the order for the provisions of the previous Act; and probably no difficulty will occur, except as regards By Laws relating to streets and buildings to which sect. 156 applies. The proviso to that section creates some embarrassment, which may be met by a restriction of the operation of the By Law to a period subsequent to the passing of the Act.

Operation of
By Laws upon
Strangers.

I have now to consider a question of much importance which has been often discussed, namely, what effect a By Law has upon strangers. It is necessary to consider what is the subject of the By Law, and who are strangers.

Where the By Law is passed to regulate the use and enjoyment of joint property, or property in

which persons have some joint interest, that By Law cannot operate upon persons who have no interest in the property.

So also where the By Law is passed to govern the conduct of the members of a Corporation, or to protect, secure, or enhance the rights and interests of the Corporation, this can have no effect upon persons who are not members of that Corporation.

In the first case the persons who have no interest in the property are strangers. In the second case the persons who are not members of the Corporation are strangers.

I shall have to show hereafter that the general rule which prohibits the operation of By Laws upon strangers in the second class of cases has been much broken, but the exception has generally been supported by custom, which, as I have noticed already, presumes some express legislative sanction in remote antiquity.

But where By Laws are passed for the general government or regulation of any particular place they operate upon all persons for the time being within the range of the jurisdiction of the body framing them. They thus take effect upon persons who may be temporarily or casually living in the place, and are not domiciled or settled inhabitants. Such persons are sometimes termed *Strangers* in reference to this subject.

As regards By Laws framed under Statutory Authority their operation depends upon the express provisions contained in the Statutes, and generally apply indiscriminately to all persons.

By Laws
under Statu-
tory Autho-
rity.

In considering the operation of By Laws upon strangers, it must be remembered that persons who become members of a Corporation are bound by By Laws passed therein before they entered, whatever

Obligation
on Members of
a Corporation.

they may be; as every one who comes into a Company agrees to all the incident charges and duties, and, consequently, to all the By Laws to enforce them.—*K. v. Clerk*, 1 Salk. 349; 5 Mod. 319.

So upon Inhabitants of a Town.

In *Player v. Jenkins*, 2 Keb. 47, a By Law imposing a penalty upon persons using unlicensed carts in the City of London was held valid to bind strangers coming into the City, as it is incumbent upon them to ascertain what are the laws of the City when they come there.

Joint Interest,

As regards the obligation of By Laws upon strangers in reference to property, I have to observe that much discussion occurred upon this in very early times, and there is no little confusion in the reports and judgments.

The 'Abridgements' of Brooke and Rolle produce decisions of the Courts from the ancient Year Books which contain propositions admitted to be binding at the present time.

Brooke, under the Titles *Leete*, 34, *Prescription*, 40 and 106, and *Custom*, 32, referring to 11 Hen. 7, 13, 14, and 21 Hen. 7, 40, lays it down that the Court of the Leet, the tenants of the Manor, and what he terms "the Town," might make By Laws to bind themselves as to the use of the Common, and to impose a penalty for breach of the By Law; which penalty might, where there was a custom, be enforced by distress.

But it is declared that in these cases the By Law could not bind strangers.

Rolle, in his 'Abridgement,' vol. i. p. 366, states the law in the same manner.

In page 365 he reports a case, *Tintney v. James*, in which it was held that where the Homage of a Manor had by custom power to make By Laws as to the ordering of the Common belonging to the Manor,

any By Law so made would bind not only the Homagers but all the other Commoners.

The case of *Lord Cromwell*, in Dyer, 322, where a different rule appears to have prevailed, is distinguished, because there the Commoners held their right of Common at the will of the Lord.

But in an *Anon. Case*, Golds. 6, 79, Windham, the Judge, said, "That some books are that By Laws made in a Leet shall bind no more than such as agree."

In *Kenrick v. The Mayor of Northampton*, Dal. 103, it was held that By Laws made by the Tenants of a Manor for the inhabitants of a town or of a leet, being for considerations of good order and for good intentions made by the greater number, bind all the other tenants of the manor and the other inhabitants of the town, *but not strangers*. In the report it is alleged that in the Year Book, 21 Hen. 7, 4, it is laid down that if the greater part of the Leet agree that no one should place his beasts on the Common before a certain day, it should bind all, otherwise there could be no By Law. And so is the Year Book, 44 Edw. 3, 19.

But *Anderson*, the Judge, contended that a man could not be compelled by a By Law, to which he had not assented, to do a thing, though the greater number had assented.

It was admitted that a By Law might set down the amount which a man should be charged with in respect of a matter which he ought to bear, as in the case stated in 44 Edw. 3, where a parish was bound to build a bridge.

I have already discussed at much length whether this was or was not a By Law.

A case is cited in 3 Leon. 265, from 8 Edw. 2, cap. 413, where the inhabitants of a town had a right of turbary in a marsh; and as some of the persons so entitled made trenches in the marsh and carried

away the turfs, to the prejudice of the others, by boats, a provision was made, by the common assent of all the freeholders of the Lord of the said town, that all the trenches in the marsh should be stopped, so that no turfs should be carried away in the boats by these trenches; and it was held that if the greater part of the Commoners assented, this By Law should bind those who had not assented, for *ubi major pars ibi totum*.

Joint Interest
in Property.

Hence it must be considered that where there is this joint interest in the property, the absence of any party from the meeting where the By Law is made will not prevent its operation upon him. He will not be considered *a stranger* to the By Law.

In 1 Roll. Abr. 366, it is stated that if by custom the Commoners could make a By Law relating to the use of their Common, subject to a penalty, although all should not have attended the meeting, still if there had been due proclamation, the absent would be bound. This the learned Judge says is doubted in 44 Edw. 3, cap. 18; but he adds that Brooke, in his 'Abridgement' "*Customs* 6," takes the distinction as to whether there was a Court or not, because he says that in all cases the Courts of England bind.

It was, however, necessary that the meeting which made the By Law should be duly constituted.

Thus in *Spencer v. Burton* (25 Eliz.) reported in Saville, 74, after adjudging that By Laws made in a Court Baron shall not bind persons who are not tenants of the manor, the Court held that a By Law made by the homage and not by all the tenants is void.

By Laws as
to the conduct
of persons in a
Town, not
Members of the
Body.

Now, in regard to those By Laws passed to regulate the conduct of members of a Corporation, where there has been an attempt to go beyond the members, the following cases may be cited:—

In *The Mayor and Corporation of Guildford v. Clark*, 2 Ventr. 247, the Corporation, relying upon a prescriptive right to make By Laws for the government of the town, made a By Law that if any inhabitant of the said town should be elected to the office of Bailiff of the town, and refuse to take the office upon himself, he should pay £20. In an action for the penalty on this By Law, objection was taken that this By Law was made upon the inhabitants of the town, whereas it could only be made upon the Freemen or members of the Corporation. The Court of Common Pleas held this to be a valid objection, though the action was defeated on another ground.

And in *Dodwell v. The University of Oxford*, 2 Ventr. 33, it is stated by the Court that without an Act of Parliament, or express prescription, a Corporation could not make a By Law to bind those who are not of the body.

There the University of Oxford, relying upon ancient Charters confirmed by Statute, made a By Law that no person should be abroad within the city after nine o'clock at night without a reasonable excuse; and a question being raised whether this was a good law to bind the townsmen, the Court of Queen's Bench seemed to have been of opinion that it was not.

In *Cuddon v. Eastwick*, 1 Salk. 192, the Court held that a Corporation, having the government of a place, their Laws shall bind strangers; but a Fraternity, being only persons united together into a Company in respect of a mystery or business, their ordinances cannot bind strangers.

This case is also reported at p. 143 of the same volume; and it is there held that a By Law, by the Council of the Corporation of London, that all strangers coming into the port of London should employ only those who were freemen of the Company of Porters in that City to unload or carry their goods,

was bad. A By Law that none but freemen should be porters would have been valid, but to confine strangers to employ City Porters only was unreasonable.

Nevertheless, in *Fazakerly v. Wiltshire*, 1 Str. 462, 10 Mod. 338, it was decided that the City of London, having the Porterage and Metage of corn imported into or exported out of the port of London, and a custom to make By Laws, could lawfully make a By Law that the Corn-porters should be a Company to work at a settled rate, and that none but free porters, of whom 400 were appointed, should intermeddle in porterage of corn within the bounds of the port, under a penalty of 20s., except in time of danger or urgent necessity, or in the case of *Bona Peritura*. The Court of King's Bench ruled that this was a useful regulation, and one which could be made to have effect upon strangers. The case *Cuddon v. Eastwick* was distinguished, because there the By Law was directed against the merchant; here it was against the Porter.

These two cases illustrate the rule as to the obligation upon members and strangers well, but the latter shows how the rule regarding strangers could be easily evaded.

I shall have occasion to consider this subject hereafter in a subsequent chapter, but it may be well that I should here notice the case of

Operation of
By Laws made
by a Company
on Strangers to
the Company.

The Butchers' Company v. Morey, 1 H. Black, 370. It appeared that the Butchers' Company, composed of the freemen of the Butchers' Company within the City of London, and every other person using the trade of a Butcher within the liberties of the City and suburbs, and within two miles of the City, were incorporated by a Charter of King George II. with power to make By Laws for the good order and government of themselves, and of all other persons exercising the art of a Butcher, or exposing flesh

for sale within the said City, and declaring how such persons should demean themselves within the said City and the suburbs, and within two miles thereof. They made a By Law that no person within the said City or suburbs, or within two miles thereof, should sell any flesh on Sunday, and imposed a penalty of 20s. for a first offence. In an action against a stranger to the Company, who sold within the specified distance, the Court of Common Pleas held that this was a valid By Law, and binding on the Defendant. The Chief Justice held that the Defendant was not altogether a stranger, he belonged to the trade of the Butchers, and that the By Law was a good regulation of that trade; that though it was a restraint, it was a good restraint; and that if it was not competent for the Company to bind such a person as the Defendant, the beneficial purpose of the Charter would be defeated, and the only persons injured by the restraint would be the members themselves, who would be prevented from selling on Sunday, while every one not a member would be at liberty to do so. He admitted that the Company could not make a By Law to affect the buyers of the meat on the Sunday.

It is not easy to acquiesce in the grounds of this judgment so far as it justifies the decision by reference to the disadvantages which the By Law would work to the members if strangers were not bound by it. Such a consideration ought not to have had any weight in determining the question as to the liability of strangers.

It is obvious that, in considering this point, admission will readily be given to the argument reported in the case of the *Trinity House Corporation v. Crispin*, Sir T. Jones, 145, where it is said: "All Laws made by Corporations have their obliga-

By Law to
operate beyond
jurisdiction.

tion by consent of the parties, or, as it were, by consent. But this cannot be as to places out of their jurisdiction."

No Corporation can make a By Law to take effect upon persons who are out of their jurisdiction, and are not members of the Corporation.

Neither can any By Law be valid which would restrain the action of members of the Corporation when out of the jurisdiction of the body.

Thus the Company of Horners in the City of London made a By Law that two persons should buy rough Horns for the use of the Company, and that no member of the Company should buy rough horn within twenty-four miles of London under a penalty. Several objections were taken; but the one which was fatal was that the Company had no jurisdiction out of the City, and therefore could not make one to bind at the distance of twenty-four miles.—*Company of Horners v. Barlow*, 3 Mod. 159.

By Law for
part of the
District.

At the same time it must be noticed that the Legislature have authorized the making of a By Law to operate in only a part of the district. An instance of this occurs in The Salmon Fishery Act, 36 & 37 Vict. cap. 71, sect. 40.

And under the Public Health Act, 1875, 38 & 39 Vict. cap. 55, sect. 276, the Local Government Board can confer upon a Rural Sanitary Authority the power of an Urban Authority to make By Laws in any part of the Union.

CHAPTER III.

HOW THE BY LAW IS TO BE MADE.

I now come to consider how the By Law is to be made. Making of
By Laws
under implied
powers.

In regard to authorities which derive their power by implication, it is necessary to refer to the general provisions which govern all their acts.

It will be found that whatever general rules exist to regulate their ordinary proceedings, the same must be followed in regard to the making of By Laws.

Thus the governing body, whatever it be, must meet in a legally convened meeting; due notice of the proposed By Law must be given; it must be submitted to the meeting for deliberation; it must be freely discussed and finally adopted by the meeting, either unanimously or by a majority of the members, ascertained according to the practice of the body in other matters.

In *Faulkner v. Elger*, 4 B. & C. 458, Littledale, J., said: "Corporators have a right to make reasonable By Laws even to restrict the number of electors, but that must be done at a Corporate meeting convened for the purpose, of which reasonable notice must be given. I will not say whether the parishioners had a right in this case, if they had given due notice of their intention, to make it a rule that no person who had not paid the church rate should have a right to vote. I am clearly of opinion that they had no right to do it on the spur of the occasion." Previous
deliberation.

But though the whole governing body is to make

The laws
may be made
by part of the
Governing
Body.

the By Law, this power may be delegated to a select part by the act of the Corporation itself.

Thus, in *Rex v. Mayor of Carlisle*, 1 Stra. 386, Eyre, J., says: "A power of making By Laws is incident to every Corporation, but yet in many they are made by a select number."

Great care, however, is required in making such delegation.

Lord Mansfield, C.J., in *R. v. Spencer*, 3 Burr. 1837, observed: "that where the power of making By Laws is in the body at large, they may delegate their rights to a select body who become the representative of the whole community;" and where the power is given to a select body, such as the Mayor, Aldermen, and Common Councilmen of a Corporation, to make By Laws for the whole Corporation, the By Laws so made shall be considered, and may be described, as made by the whole Corporation.—*Green v. Mayor of Durham*, 1 Burr. 130; 1 Ken. 512.

But it must be remarked that the assent of a part of a Corporate body to a By Law which excludes such part from any of its chartered rights will be of no avail where that part was not lawfully entitled to join in making the By Law.—*R. v. Head*, 4 Burr. 2521.

Again: a By Law made by the common assent of a Corporation may be valid to bind all the members, but if made by a part of the Corporation to exclude the others without their consent it is not good. *R. v. Outbush*, 4 Burr. 2208.

I have stated that the By Law must be made by the majority of the members.

To be made
by the ma-
jority.

This point was considered at very great length in the celebrated Church Rate case above cited, where the contention was whether the making of the assessment was or was not the making of a By Law. If it were the latter the question was settled, because

in *Gosling v. Veley*, 19 L. J. R. (Q. B.) 137, Parke, B., says, "the making of a By Law is a legislative function, and that only is law which the actual majority makes such, and the minority cannot make the law." Rolfe, B., and Alderson, B., in the same case expressed opinions to the same effect.

If it were not a By Law, it was an act of a different kind involving other considerations. Ultimately it was decided to be an act requiring the consent of the majority, whether it was a By Law or not.

But the assent of the majority when duly ascertained to the By Law binds the minority although they dissent, as was laid down by Lord Coke—in his argument in *Davenant v. Hurdis*, Mo. 584—where he appears to be referring to the implied authority of Corporate bodies.

This is the rule which provides generally, if not universally.

The law is made by the declaration of the body, but it is of course necessary that it should be expressed in writing, and that this writing should be solemnly made and placed in such a depository as will secure its preservation. Hence some duly appointed officer receives the writing, and preserves it either by entering it on the minutes of the proceedings of the body or by recording it in some other manner.

Must be
recorded in
writing.

Where the power to make By Laws is granted by Charter, that Charter for the most part prescribes how the body created by it are to act; and the mode of making, preserving, or recording their By Laws will be governed accordingly.

By Laws by
Charter.

But in this case also the By Law must be evidenced by a writing preserved in the records of the chartered body.

How made
under Statutes.

Where indeed the power is granted by Statute there is generally a provision which prescribes the mode of making the By Law.

Thus the 5 & 6 W. 4, cap. 76, sect. 90, enabling the Town Council of a borough to make By Laws, enacts that "no such By Law shall be made unless at least two-thirds of the whole number of the Council shall be present," but no particular formality is prescribed.

This is not quite the case in other Statutes.

The Markets and Fairs Clauses Act, 10 & 11 Vict. cap. 14, sect. 42, provides that the By Laws made under it "shall be reduced to writing under the common seal of the undertakers, if they be a body corporate, or the hands and seals of two of the undertakers, if they be not a body corporate." A similar provision is contained in the Companies Clauses Act, 8 & 9 Vict. cap. 16, sect. 124; in the Railway Clauses Act, 8 & 9 Vict. cap. 20, sect. 109; in the Commissioners Clauses Act, 10 & 11 Vict. cap. 16, sect. 96; in the Piers, Harbours, and Docks Clauses Act, 10 & 11 Vict. cap. 27, sect. 83; in the Towns Improvement Clauses Act, 10 & 11 Vict. cap. 34, sect. 200; and the Town Police Clauses Act, 10 & 11 Vict. cap. 89, sect. 71, incorporates the provision from the 10 & 11 Vict. cap. 34, sect. 200.

As regards the By Laws relating to Railways, in the 8 & 9 Vict. cap. 20, sect. 709, it is enacted that they shall be made subject to the provisions in the 3 & 4 Vict. cap. 97. These provisions, however, do not apply to the making of the laws, but to their confirmation, as will be shown hereafter.

So it was enacted in the 11 & 12 Vict. cap. 63, sect. 115, "that all By Laws made by the Local Board of Health under and for the purposes of this Act shall be in writing under their seal, and the signature of any five or more of their number (or in the case of a corporate district) under the common

seal." But the recent Public Health Act, 38 & 39 Vict. cap. 55, which abolished the distinction between corporate and non-corporate districts, enacts in sect. 182 that, "all the By Laws made by a *Local Authority* under and for the purposes of that Act shall be under their common seal."

The term Local Authority here includes every Urban and Rural Authority, so that the By Laws made even by a Town Council in reference to any purpose or object of the Public Health Act must be under seal, and consequently in writing. The signature of five members, which was required to By Laws made prior to this Act, is now dispensed with.

Of course this formality is required in respect of By Laws made before the Act of 1875.

These Statutes do not give any directions as to the steps to be taken by the bodies referred to in framing, and preparing, and passing the By Laws.

The obvious and probably the customary mode is for the General Board to appoint a committee of their body to prepare the code of laws where it consists of several laws or series of laws, and when the committee shall have framed the code they report the same to the General Board, who adopt it or modify it according to the views of the majority of the members present.

When the By Law is to be confirmed by the Local Government Board they have, by memorandum dated November 11, 1873, advised in reference to the making of the By Law as follows:—

"By Laws and Regulations which require the confirmation of the Local Government Board should, before they are finally approved of by the Local Authority, be submitted to the Board *in writing*, and not in print, upon foolscap paper, with a margin of one-third on each folio. The draft thus forwarded

Regulations
of Local Go-
vernment
Board.

for the perusal and observations of the Board should be written on one side only, and signed by the Clerk to the authority.

"The notice of intention to apply for confirmation should be postponed till after the draft has been examined by the Board, and the copy of proposed By Laws for the inspection of the ratepayers should not be deposited at the office of the authority until the draft has been examined and returned by the Board.

"When the draft has been thus examined and returned, and the By Laws have been published as required by the Statute applicable thereto, they should, together with the draft so returned, be forwarded, sealed, *and where necessary, signed*" (but now this is unnecessary, as noticed above), "to the Local Government Board for confirmation. The Board should at the same time be furnished with a copy of the newspaper containing the advertisement of the intention of the authority to apply for confirmation of the By Laws."

It will be noticed that this memorandum refers to the deposit of the By Law, and applies to cases where confirmation or approval of the By Law is required; and as that deposit is a preliminary to the confirmation, I shall notice it at length under that head.

I have also set out there the recommendations of the Education Department and the Board of Trade on this head.

Other Statutory provisions.

Referring to other Statutory provisions, I have to observe that in the case of the Literary and Scientific Institutions the Statute applicable to them (17 & 18 Vict. cap. 112, sect. 24) provides that "the governing body, if not otherwise legally empowered to do so, may at a meeting specially convened according to the regulations of the institution, make By Laws" for the purpose therein mentioned.

Here there is no provision as to the writing in which the By Laws are to be recorded.

As regards Joint Stock Companies, the 7 & 8 Vict. cap. 110, sect. 47, enacted that all By Laws made by any Joint Stock Company completely registered under that Act, in pursuance of the power therein before given, must be reduced into writing, and must have affixed thereto the common seal of the Company; and that such By Laws must be *registered* at the office for registering Joint Stock Companies, and until they are so *registered* they shall not be of any force. But this Act was repealed by 25 & 26 Vict. cap. 89, which, however, requires the Articles of Association to be registered, and provides for the mode of altering regulations by resolutions to be afterwards registered.

The By Law to be made by the College of Surgeons under 38 & 39 Vict. cap. 43, sect. 1, is to be made under the common seal of the College.

And that by the University of London, under 36 & 37 Vict. cap. 55, sect. 1, is also to be under the common seal of the University.

In neither Statute is there any reference to the writing.

The Salmon Fishery Act, 36 & 37 Vict. cap. 71, sect. 39, requires the By Laws to be made by the Board of Conservators to be reduced to writing, and sealed with the common seal of the Board; but it provides that no By Law shall be made unless notice of an intention to propose the same shall have been given in the notice convening the meeting of the Conservators at which it is intended to propose such By Law, which notice shall be issued one fortnight at least before the date of such meeting.

The Alkali Act 1853 (26 & 27 Vict. cap. 124), and The Mines Regulations Act (35 & 36 Vict. caps. 76, 77), which require special rules to be made by owners of such works and mines, do not prescribe any precise

Special Rules
under Alkali
Acts and in
Mines.

mode in which they are to be made. It is obvious, however, that they must be reduced into writing, and signed by the owners of the works; though as regards mines, as the owner, agent, or manager, may frame the same, it is presumed that either person may sign them.

The special rules in the case of the mines *when established* (i. e. confirmed) shall be signed by the inspector of the district.

By Laws by distinct authorities relating to same subject.

I may here remark that where regulations are to be made by separate authorities in reference to the same subject matter, no objection can be taken to the codes framed by these authorities separately, but published together, and having the table containing them signed and sealed by the respective authorities. —*Bailey v. Williamson*, L. R. 8 Q. B. 118.

By Laws under Custom how made.

Now as to the making of By Laws which are authorized by custom. I find but few decisions to elucidate this head.

So far as the custom requires any formalities to be pursued it must be followed.

Thus in *Scarling v. Criett*, Mo. 75, where in a manor a custom authorized the making of a By Law by the tenants and other residents and inhabitants of a manor, it was held to be insufficient to allege that the By Law had been made by the homage with the assent of other tenants of the manor. It should have been alleged to have been made with the assent of all the tenants, or of the greater part of them.

But where it was alleged that the homage, at a Court held before the Steward, made a By Law, the allegation was sufficient after verdict, as it must be understood that the Court was held before the suitors. —*Lambert v. Thornton*, 1 L. Raym. 91.

In the making of By Laws by the authority of custom, the requisites of that custom must be strictly observed; so that if it enables the majority to bind the minority, such effect will be given to the By Law, whereas if the custom do not warrant this no such effect will be given, 5 Co. R. 63.

In *The Chamberlain of London's Case*, 3 Leon. 264, a distinction appears to have been taken, that where the By Law was to bind the inheritance all must assent, where to bind the goods the assent of the majority is sufficient.

The custom upon this point must itself be free from objection, otherwise the By Law, though made in conformity with it, cannot be supported. Accordingly it appears from *Wells v. Cotterell*, 3 Lev. 48, that a custom in a manor for the Steward with the consent of the homage to make By Laws is not good. The By Laws should be made by the homage themselves.

But the application of custom to the making of By Laws has been most frequently discussed in reference to the obligation of By Laws upon strangers, and I refer to the remarks already made upon this part of the subject in the previous chapter.

In regard to the mode of framing By Laws I wish to remark that, though they are treated with much leniency by the Courts, and no technical accuracy or strictness is required, it is nevertheless advisable that the general rules which govern the framing of Statutes should be attended to.

Observations
as to the
framing of By
Laws.

It is proper that the By Law should show the authority under which it is made, and the general purport and object of the enactment.

In many old By Laws which I have seen there has

Preamble.

been a very long preamble which set forth in full the authority under which the By Law was made, and the purpose for which it was made.

This preamble, though not absolutely necessary, tends to guide in the construction of the law.

Rubric.

The modern By Laws made under the Sanitary Acts, therefore, show this in a short manner by prefixing a heading, or rubric, to the respective series.

This is an abbreviation of the formal preamble, and will generally effect the object of that part of the enactment.

I have also to notice that when a By Law is to be substituted for an existing By Law, it is desirable that the previous law should be distinctly repealed or rescinded. By this means ambiguity and confusion are prevented.

I have also a remark to make in regard to the penalty.

Penalty.

Every By Law requires a penalty to be affixed to its breach. But where there is a series of By Laws relating to the same subject, it is not necessary that a penalty should be so affixed to each By Law, it will suffice if the penalty be set out at the end of the series where, as is generally the case, the same penalty is assigned to each By Law. Where a higher penalty is to be assigned to any one By Law it may be expressed separately in the general clause, or it may be set out specially in the particular law to which it applies.

It is a common practice to set the penalties out at the end of each series of a set of By Laws, but it would be practicable and legal to set them out so as to apply to the whole of the several sets.

Where the Legislature has required that the By Law shall be framed so that the penalties may be mitigated, care must be taken in framing the By Laws that this power is strictly reserved.

I think this is best effected by a specific proviso appended to the penal clause.

CHAPTER IV.

OF THE PROPERTIES OF BY LAWS.

I now enter upon the most important branch of this subject. It is that which I have proposed to term ^{Properties of By Laws.} the Properties of By Laws. This is not altogether a satisfactory term to be used, but I know of no one better.

As a By Law is a law made by an inferior authority, it must not only contain all the properties of a public law, but is subject to certain qualifications arising out of the subordination of the authority that makes it.

Hence, in the *first* place, it will be seen that these propositions are established :—

1. A By Law must be *consistent with*, and not repugnant to, the *general law*. ^{Propositions established.}

2. It must provide something in *addition* to the *general law*, and, therefore, must not simply re-enact it.

3. It must not make a provision in respect of a matter already provided for *other than* what the *general law* has prescribed.

But, in the *second* place, it is necessary to advert to the general requisites of a public law, and thus it is found that :—

4. A By Law must be *certain* in its enactment, *i.e.* free from ambiguity, and must afford complete direction to those who are to obey it.

5. It must be *general* in its application.

6. It must be as it is expressed in the usual authorities, and by the Courts in their numerous

decisions, *reasonable*. This term, as it will be seen hereafter, involves a great deal of consideration.

7. It must be *positive* in its terms, and directed to prohibit or enjoin an act by the persons upon whom it is to operate.

8. It must contain a proper sanction by prescribing a *definite penalty* for the breach of it.

9. Lastly: the law must not be made in respect of a matter not within the authority of the body enacting it, nor to operate upon persons or in a district not subject to their control. In technical terms, it must not be *ultra vires*.

It is, however, to be carefully noticed that all that is here discussed relates only to the legal aspect of the By Law. The policy or expediency, the usefulness or futility, the applicability, the urgency or necessity for the By Law are subjects for the consideration of the confirming authority, where there is one, but do not raise questions of law; though they may sometimes assist in the consideration of the question of the reasonableness of the By Law, or its excess of authority.

As to dispensing power.

I shall be led to remark specially as to the power of the authority to reserve to itself a dispensing right in special or individual cases, and, farther, as to the consequences of one invalid By Law out of a series.

Before I proceed to deal with my subject in the order above prescribed, I think it right to make the following remarks:—

Qualities as described by Lord Coke.

In the report of the case termed *The City of London's Case*, in 8 Co. Rep. p. 251, and in 2 Brownl. 284, it is laid down that a By Law should have, according to Lord Coke, five qualities, which are thus expressed by the latter reporter:—

1. It should be *congruum*, that is, the penalty for the breach should be apt and appropriate, as by a penalty instead of imprisonment.

2. It should be *bonæ fidei consonum*. The explanation given is that the object of the By Law should be to prevent *mala fides*, namely, secret trading, or other deceitful practice.

3. It should be *rationi consonum* or *consentaneum*. That is, the By Law should be reasonable.

No explanation is given in the report as to this quality.

4. It should provide a remedy for the general benefit of the citizens and others frequenting the place where it is made.

5. It should be for the benefit of the King and the general public.

The arguments by which the By Law in question was supported under these heads would not be readily received at this time, but that these several qualities should exist cannot be denied.

Comyn, in his Digest, By Law (B 1.), referring to the report in Coke, says every By Law must be *legi fidei rationi consona*, but all these words are not found in that report.

I now, however, proceed to consider this subject under the several heads which I have above set forth.

The first rule is that a By Law must be consistent with and not repugnant to the general law.

Accordingly, it is stated as a proposition, in 5 Co. 63, that all By Laws made for the true and due execution of the laws and statutes of the realm, or for the well government and order of the body corporate are to be allowed, while such as are contrary or repugnant to those laws and statutes are void.

It is obvious that no State can allow any limited

1. By Law must be consistent with the General Law.

authority within it to make a By Law which should contravene, directly or indirectly, that which is established as the general law, either in reference to the conduct of individuals or the policy of the Government.

It is not, therefore, surprising to find this negative proposition set forth in text writers and in the *dicta* of Judges. But it is somewhat singular to find the great care which the Legislature has taken in this respect.

Most of the Statutes which in modern times have given power to bodies to make By Laws contain express saving of what, however, seems to be an unnecessary precaution.

Thus, the Public Health Act, 11 & 12 Vict. cap. 63, sect. 115, after enabling Local Boards to make By Laws, contained a proviso which is repeated in the 38 & 39 Vict. cap. 55, sect. 182, in the following terms: "Provided that no By Law made under this Act shall be of any effect if repugnant to the laws of England or the provisions of this Act."

A similar proviso is contained in the Railways Regulation Act, 8 & 9 Vict. cap. 20, sect. 109; in the Markets and Fairs Act, 10 & 11 Vict. cap. 14, sect. 42; in the Companies Clauses Act, 8 & 9 Vict. cap. 16, sect. 125; in the Commissioners Clauses Act, 10 & 11 Vict. cap. 16, sect. 96; in the Piers and Harbours Clauses Act, 10 & 11 Vict. cap. 27, sect. 83; in the Towns Improvement Clauses Act, 10 & 11 Vict. cap. 34, sect. 200; and in the Tramways Act, 33 & 34 Vict. cap. 78, sect. 46.

But in applying this rule, I must observe that—

Where a Statute prohibits certain specified acts, and empowers an authority to make By Laws not inconsistent with the general law of the land, a By Law prohibiting another act not sanctioned or provided for by the statute is not invalid.—*Edmonds, App., Watermen's Company, Resp.*, 1 Jur. (N.S.) 727.

Lord Campbell, in giving judgment in that case, said :—

“ A By Law cannot be said to be inconsistent with the laws of this kingdom merely because it forbids the doing of something which might lawfully have been done before, or requires something to be done which there was no previous obligation to do ; otherwise a nominal power of making By Laws would be utterly nugatory.”

2. The second rule is that the By Law must provide something in addition to the general law, and, therefore, must not re-enact it.

2. Must provide an addition to the General Law.

In *The Q. v. The Saddlers' Company*, 3 E. & E. 80, in the Court of Exchequer Chamber it is stated, “ A By Law must necessarily add something to the common law, otherwise it would be idle.”

In many By Laws which I have seen, the framers have proposed to prohibit Acts which have been already prohibited by Statute, and made subject to specific penalty. But such a proceeding is evidently a breach of this rule. There is in such cases no addition to the law, but only a declaration that the framers of the By Law prohibit that which the law has already made unlawful.

At the same time it is necessary to distinguish the cases where the By Law, although dealing with a matter already prohibited by law, superadds by a By Law a penalty to meet the injury caused to the body affected by the offence or default, which is not provided for by the general law.

Thus, a By Law made by a Corporation to enforce by penalty the acceptance of an office by a person elected to it, is not vitiated by reason of such person being liable to be indicted for his default, because the judgment on that indictment would be for the benefit of the Crown, whereas the penalty would be

for the benefit of the Corporation.—*The City of London v. Vanacre*, 1 Salk. 142.

And in the report of that case in Lord Raym. 499, and Carth. 483, Holt, C.J., points out that the Corporation might be in danger of losing their Charter if the officer had not been appointed. Hence the Corporation was justified in imposing the penalty by the By Law.

In like manner it was held in the *Mayor of Exeter v. Starr*, 2 Show. 158, that a fine imposed by the Corporation on one of its members for not accepting an office, because he refused to take the oath against the covenant, was enforceable, although the office was in fact void, and he was punishable by law if he attempted to hold it. It is stated in the report that he had disabled himself from holding it.

But it must be also observed that

In the great case of *Harrison v. Evans*, 6 Bro. P. C. 181, it was decided by the House of Lords that a By Law of the Corporation of London, whereby any member of the Corporation, who, being elected to the office of Sheriff, should refuse to take upon himself the execution of its duties, should forfeit a certain sum of money, could not be enforced against a Dissenter, who, not having taken the sacrament within one year next before his election, was rendered ineligible to a corporate office by the 13 Ch. 2, cap. 4.

As a converse proposition to that which has thus been considered, it must be noticed that the By Law cannot dispense with or supersede the common law remedy.

In *K. v. Bowers*, 1 B. & C. 586, the defendant, in a return to a mandamus requiring him to take upon himself the office of Councillor, stated that by a By Law persons so refusing were subject to a certain fine, and that he had paid it. It was held that this return was insufficient, as it did not show that the fine was an exemption from the service; whereas it

is an offence at common law to refuse to execute an office when duly elected.

As a farther illustration of this rule, it is well to refer to the case of *Bosworth v. Hearne*, Andr. 91.

The Statute 15 Ch. 2, cap. 11, enacted that Brewers should not deliver beer in any city before notice given to an officer of Excise, and then only between the hours of three in the morning and nine in the evening. It was held in this case that this Statute did not prevent the Corporation of London from making a By Law to prohibit the delivery of beer in the City of London from Michaelmas Day to Lady Day after *one o'clock* in the afternoon, or from Michaelmas Day to Lady Day after *eleven o'clock* in the morning. This By Law did not contradict the Statute which was made for a different purpose, and the time left thereby to the brewers remained open to the same regulations as existed before.

3. The third rule is that the By Law must not make a provision in respect of a matter already provided for by law, other than what the general law has prescribed.

3. Not provide something other than what the General Law has provided.

This is illustrated by the case of *The Calder and Hebble Navigation Company v. Pilling*, 14 M. & W. 76.

There the Company had power, under a Local Act, to make By Laws for the good government of the Company, and for the good and orderly using of the navigation, and also for the well governing of the bargemen, watermen, and boatmen who should carry any goods, wares, or merchandise upon any part of the navigation.

The Company made a By Law to close the navigation on Sunday, and imposed a penalty of 5*l.* for a breach.

It was held that this By Law was illegal. Alder-

son, B., in his judgment said that "the rules which the Company were empowered to make had nothing to do with the regulation of moral or religious conduct, which are left to the general law of the land and to the laws of God." And again, "the Company are to regulate the manner of carrying goods on their canal, but as to the moral and religious conduct of those who carry them, that is a matter not left to them."

Rolfe, B., arguing upon the general Statute, 29 Ch. 2. cap. 7, said that, "supposing it was repealed, and that it is in general lawful to use barges on a Sunday, it was monstrous for the Company to prohibit, *pro salute animarum*, of the Queen's subjects what the law allows: and if it were not repealed, the Legislature had imposed a fine of 5s., and the Company had no authority to impose a penalty of 5*l*." He further stated: "The Legislature says you may make By Laws for the good and orderly navigation of the canal, and for the government of the boatmen and bargemen connected with it," that is to say, "in order that the navigation may be used with the utmost degree of convenience to every one."

In the course of the argument, Rolfe, B., said: "Suppose a By Law were to impose a penalty for an assault, would not that be bad?" and the counsel who was arguing answered in the affirmative.

In By Laws framed under the Fairs and Markets Act, and under the Recreation Grounds Act, it was a practice to prohibit assaults upon the officers of the market or the grounds, and to subject the offenders to penalties. But such By Laws violated the rule above expressed.

The recent Act, 38 & 39 Vict. cap. 55, in sect. 164, noticed in p. 41 above, makes some provision as to this point in Recreation Grounds.

So where the authority prohibit unlawful destruction of property, or drunkenness in persons whose conduct is to be regulated by the By Law. Here

the makers of the By Law appear to supersede the Legislature of the country, which has already provided a remedy for such offences.

4. The fourth rule is that a By Law must be certain in its enactment, *i.e.* it must be free from ambiguity, and afford complete direction to those who are to obey it. 4. Must be certain.

This appears to be a very clear proposition. It is the general element of all law that it should be so certain that there can be no doubt as to how the person bound by it is to act under it; though the imperfect use of language often defeats the purpose of the legislator.

But it is a common complaint as regards By Laws, that they are not certain, nor definite. It is constantly found in By Laws framed under the Sanitary Laws that the authority framing them make requisitions as to the execution of works by referring almost everything to their own subsequent direction and approval. Free from ambiguity, and definite.

Thus, a builder instead of being informed by the By Law how he is to erect his buildings, or what materials he is to use, is required to form his plans, place his building, and use his materials, not according to precise and definite rules, but according to the direction or to the satisfaction of the authority or their surveyor.

Without adverting to any other objection to such By Laws, I conceive that they are defective as being uncertain.

There is, indeed, a case requiring to be noticed on this point, which at first sight appears to be adverse to some extent to this remark.

In the case of *The K. v. Mayor of Durham*, 1 Ken. 526, reported in 1 Burr. 127 as *Green v. Mayor of Durham*, it was held by Lord Mansfield, C.J., that if a Corporate body make a By Law providing

that a matter shall be made subject to their approval at a meeting, no objection can be made on the ground that they may not hold a meeting, or that they may withhold approval arbitrarily. As regards the first objection, a meeting could be compelled by mandamus; and as regards the second, the C.J. said, that where approbation is the consequence of right, if it be corruptly refused a mandamus will lie. The writ would suggest the qualification, and command the Mayor himself to approve and admit.

The matter under discussion was the admission of a freeman to his freedom, and did not involve any question as to the line of conduct to be pursued by him, or as to any act which he was to do. Hence the objection of uncertainty was not raised.

In *The Stationers' Company v. Salisbury*, Comb. 222, a Livery Company made a By Law that if a member elected on to the livery should refuse to accept it without reasonable excuse, to be approved of by the assistants of the Company, he should forfeit 40*l*. The Court of Queen's Bench held this to be bad, because the Company could not make themselves judges of the reasonableness of the excuse.

So in the case of *The Taylors of Ipswich*, Godb. 233, where a Company made a By Law prohibiting a person from trading who had not served an apprenticeship to their approval; it was objected that the Company reserved the proof to themselves of the apprenticeship, and so it was said they made themselves judges in their own cause, and that there was no means of compelling the corporation to accept the proof, any wilful refusal to accept of the same only supplying a remedy for action. This was held to be a valid objection.

If in any case the approval of the authority be required to be given, and the same is withheld, not in the exercise of any discretionary power, but by

reason of the interpretation which the authority may have placed upon the law under which they act, it is probable that their action may be scrutinised and controlled by a Court of law to which application may be made for the process of *mandamus*. See the observation of Martin, B., in *Pearson v. Hull Local Board of Health*, 3 H. & C. 941.

But it would be very difficult in these days to raise an issue in *mandamus* as to the motive influencing a Local Body in the exercise of their discretionary power.

In farther illustration of this property of certainty, I desire to cite the following cases:—

A Court Leet under a custom made a By Law regulating the time when sheep should be placed on a common, under a penalty of 20s. for every sheep which should be depastured thereon contrary to that By Law and *all former By Laws*. In replevin for distraining sheep, the defendant justified under this By Law, and the Court of Common Pleas expressed their doubts whether the defence could be sustained, as there was nothing to show what the former By Laws were. Hence the By Law was uncertain.—*Gerrish v. Rodman*, 3 Wils. 155.

Illustrations
of certainty
and uncer-
tainty.

In *The Innholders' Company*, 1 Wils. 281, an action was brought on a By Law, that every brother of the Company of Innholders should pay 2s. a-year, *quarterly*, to be applied to particular purposes for the benefit of the Company, under a penalty of 5s. per annum. This was so far valid that the action was sustained against an objection that no dates were assigned for the quarterly payments.

A Company made a By Law that their Clerk should draw and enrol Indentures of apprenticeship. They afterwards made another By Law that 15s. should be paid for each pair of Indentures, of which

the Master, Wardens and *Mr. B. should settle how much the Clerk should have* and the rest to be paid for the use of the Company. In a particular case 3s. 6d. was paid to the Clerk, and 2s. 6d. was tendered to the Master for enrolling, but he demanded 2s. 6d. for enrolling, and 9s. for the use of the Company.

The Court of King's Bench held this By Law was bad, first as contrary to the Statute, 22 Hen. 8, cap. 5, which limited the fee on enrolment to 2s. 6d.; secondly, because the By Law was uncertain in not determining what was to be paid to the Clerk. This was to be settled by arbitration, and no award had been made.—*Nevesby v. Webster*, 1 Ken. 243; *S. C.* by the name of *Leathby v. Webster*, Say. 251.

Certainty.

In *Eagleton v. The East India Company*, 3 B. & P. 55, the Court of Common Pleas held that in sales by auction of their goods the East India Company had a right to make reasonable regulations, but that it was always a question whether their regulations were reasonable or not. The Company were not at liberty to direct that any individual should be forever excluded from the sales merely if they thought fit so to direct. They might annex such conditions to their sales as were consistent with the obligation they were under to make their public sales indifferent, and open to all bidders. Whatever regulations they made must be regulations not depending upon their sole will and pleasure, nor to be enforced or relaxed by that rule only; for if such regulations were allowed, they would thereby be enabled to make that which was required to be a public sale, something totally different.

The substantial default in such regulations would be the want of Certainty.

On the other hand—

A Local Board made a By Law—That the several places in the district where painted Boards shall *from time to time* be placed to distinguish them as

stands, shall be the stands for such number of carriages as shall be mentioned on such boards, and no driver of any carriage shall place the same on any other of such stands, or shall ply for hire in any of the streets within the district at or on one of such stands under a penalty of 40s.

It was held that this By Law was valid, and not open to objection on the ground of uncertainty, as not specifying the exact localities where the stands were to be.—*The Blackpool Local Board of Health v. Bennett*, 4 H. & C. 127.

The Court were of opinion that it was quite proper that the Local Board should reserve to themselves the power of altering the stands from time to time without a fresh By Law.

As the By Law must be certain in all respects, it must be so in regard to *the penalty*. That must be a sum certain. In Kyd. on Corpor. vol. ii. p. 156, it stated that "this (the penalty) must not be left to the arbitrary assessment of the makers of the law according to the circumstances, even though the utmost extent of the sum be limited." This passage was cited with approbation by Lush, J., in the recent case of *Hall v. Nixon*, 32 L. T. 92; L. R. 10 Q. B. 152; 44 L. J. (M. C.) 51. The note of Sir Ch. Rawlinson, on sect. 90 of the 5 & 6 Will. 4, cap. 76, in the 5th Edition of his Edition of that Act, should also be referred to; and the report of the case of *Wood v. Seari*, in Bridg. 139. Certainty as to Penalty.

If an action be brought upon a By Law where the penalty is left uncertain, there would be no means of obtaining a judgment, because neither the Court nor the jury could settle what should be the amount.

If, indeed, the By Law empower any other body to fix the amount, having prescribed the maximum, the objection is removed.

A By Law made by a Chartered Company provided that the offender should forfeit and pay to the master and wardens for the time being for every *such* default the sum of 5*l.*, or less, at the discretion and pleasure of the master and wardens, so it be not less than 40*s.*, and this was held to be not bad for uncertainty.—*Piper v. Chappell*, 14 M. & W. cap. 624.

The penalty here was fixed, although power was given to an authority to mitigate it within specified limits.

Statutory
provisions.

In many recent Statutes the authority is empowered to fix a penalty not exceeding a certain amount, but it is provided that there shall be a power to mitigate it.

A practice has prevailed to leave the penalty uncertain by saying that it shall not exceed a sum named which is frequently the limit already prescribed by the Legislature. But I apprehend that this is not correct. I think that the authority should determine what is the amount to be assigned as the appropriate penalty for the breach of the By Law as a general rule.

But in obedience to the requirement of the Statute, they should make a special proviso that the Court before which the penalty may be enforced, shall be at liberty to mitigate the penalty to the amount which in the particular case may be adequate.

To fix the penalty by a general maximum is convenient to the authority and saves trouble, but it is not what the Legislature intends. It is expected that the Local Authority will carefully consider each By Law according to its importance and gravity, and fix the amount of the penalty accordingly, leaving the Court afterwards to deal with individual cases which come before it where the circumstances show that the extreme penalty ought not to be enforced.

Here the law is certain, but the administration of it is regulated according to the merits of the offender.

A Fifth Property of a By Law is that it should be general, obligatory upon all persons equally and indiscriminately. It must not be made for the benefit or for the detriment of any particular person.

5. By Law must be general, not particular.

Thus, in an old Reporter (Goldsb. p. 79) it is reported that Peryam, a Judge in the reign of James I., laid it down that every By Law ought to be made for the common benefit of the inhabitants and not for the private commodity of any particular man; as if a By Law be made that none shall put his beasts on the common before a day appointed it is good. But if a By Law be made that the commoner shall not carry hay on the lands of the Lord, or break the hedges of J. S., this is not good, because it does not respect the common benefit of all.

Lord Coke, in his argument in *The Chamberlain of London's Case*, 3 Leon. 264, states a similar proposition.

There is, indeed, a short note of a case of *Burton v. Spencer*, Savile, 74, deciding that a By Law by the Court Baron that no commoner should place his cattle in his severalties before a particular day, is void. This case is cited by Comyn, Dig. By Law, C. 4, as an authority for a rule, in which he states that a By Law for the total restraint of one's right is void, as if one be debarred the use of the land.

This objection does not apply to the rule now under consideration, which points to the mischief likely to arise when the Local Authority would exercise its functions in particular or individual cases.

The authority may favour or injure the person acted upon, through some improper motive, or

through ignorance or inadvertence. And even if their action be altogether free from blame, there is risk of evil report or suspicion of partiality.

Dispensing
power reserved
to the makers
of the By Law.

I have observed that the authorities who make By Laws are very prone to reserve to themselves powers to provide specially for special cases, to make individual exceptions out of the general rules, or to dispense with regulations when they deem it convenient or proper to do so.

It is urged that this is necessary, because they cannot foresee all the peculiar cases which may arise, and in which their general law may prove harsh or inconvenient.

To this it may be answered that greater caution should be exercised in framing the law so as to render it more generally applicable, or so as to ascertain and set out in the law itself where and what exceptions should be made. Moreover, there is generally power to alter By Laws and make new rules. If, therefore, it be found that the By Law is too extensive, or not sufficiently restrictive, another may be made with the necessary modification, according to the course adopted by the Legislature of the country in respect of general laws.

It has been also considered that this discretionary power of dispensation will assist the authority in cases where the By Law as expressed is in excess of the legal power vested in them.

But with reference to this remark I wish to refer to the case of *Waite v. Garston Local Board*, 27 L. J. (M. C.) 19; L. R. 3 Q. B. 5.

A Local Board made a By Law prohibiting certain erections in absolute terms, but added a provision that the Local Board at their discretion in certain cases might modify the requirement, and dispense with the strict compliance with the By

Law on such terms as they might deem fit and reasonable. The By Law having been held to be unreasonable, the Court held that this dispensing power did not remove the objection. The provision which left it at the discretion of the Board to enforce the By Law or not could not render valid what was otherwise invalid.

And, again, in the case of *Wortley, App., Nottingham Local Board*, Resp., 21 L. J. (N. S.) 582, a By Law prohibited the throwing skins in the market and elsewhere without the authority of the superintendent of the market. The Court of Queen's Bench held that the restriction was unreasonable, and that it was not cured by the power of the superintendent to authorize in particular cases.

As many By Laws require confirmation, the power of dispensation may be exercised where the confirming authority would have refused approval, so that the confirmation would become a mere formal act.

The Sixth Property of a By Law is that it shall be *reasonable*, i.e. consistent with sound reason and propriety. When this rule is illustrated by the numerous examples supplied by the reported cases, it will be seen that it is a remarkable specimen of judicial legislation. The Courts of Law have set themselves to examine the By Law submitted to them, and have determined that what has been enacted is that, which they, if legislators, would have approved of, or the reverse; and have accordingly therefore concluded that the By Law was a good or a bad one, and have declared it to be reasonable or unreasonable.

6. A By Law must be reasonable.

In the case of *The Framework Knitters' Company v. Green*, 1 Ld. Raym. 113, the Court said that members of Corporations are not bound to perform

By Laws except they are *reasonable*, and the reasonableness of them is examinable by the Judges.

It may indeed be admitted that this was not an absolute assumption of jurisdiction on the part of the Courts; as in very early days the power of making By Laws was sometimes granted under the precise stipulation that they should be *reasonable*.

In Trem. P. C. 368, a By Law by the City of London is set out which recites a Charter of Edward III., whereby he granted to the City the authority to make By Laws in respect of matters dependent on their ancient customs, so that they should be profitable to the King and to the citizens, and other persons repairing to the said City, and *agreeable to reason*.

The cases which have from time to time been submitted to the Courts of Law have been so numerous as to present classes to which this property, when once conceived, could be generally applied, and to afford a very considerable branch of this head of my inquiry.

By Laws relating to the constitution of the body, and election of members and officers.

In reviewing the cases in which this property of *reasonableness* has been the subject of discussion, I think I may place in the first class those which relate to *the constitution* of the body enacting the By Law, and to the *election* of its *members* and *officers*.

When these several cases have been investigated, it will be apparent that there has been a great attempt on the part of the governing body who made the By Laws to use their powers in this respect so as to consolidate or enlarge their own authority and the Courts of Law have sometimes aided and sometimes thwarted this action.

It is obvious that where a Corporate Body or any Association is formed, if there be no provision in the instrument which constitutes it, the governing body must make By Laws to provide for its own constitution, and for the election of its members and of its officers. Such By Laws would, in the absence of express Charter or any constituent agreement, be passed by the consent of the majority. Consequently it is difficult to see that any question as to the reasonableness of any By Law on these points could arise. It would have been a matter of fact whether the presumed By Law had been made, and when this was established the matter was concluded.

When such By Laws are necessary.

But where such Corporation exists by prescriptive right, or where it has been created by Charter, or where any Association relies upon any instrument for its creation, and a power of making By Laws is claimed either under the prescription which shrouds its origin or under the Charter or instrument by which it was created, the By Law which relates to the above subject must be *reasonable* or it will be void.

The cases may be ranged, first, under such as have referred to the *qualification* of the electors.

(1.) As to the qualification of electors.

Thus a By Law to alter the qualification of the electors of the constituent body is unreasonable and void.—*R. v. Spencer*, 3 Burr. 1833; *R. v. Culbush*, 4 Burr. 2204.

Again, where a Corporation required the members to be free by reason of certain requisites, a By Law enabling strangers to purchase their Freedom was held to be void as altering the constitution of the body.—*R. v. Breton*, 4 Burr. 2260. Here the qualification of the electors was changed.

In *Faulkner v. Elger*, 4 B. & C. 449, by a custom in

a parish, the parishioners had a right to elect the Perpetual Curate. By a resolution in a meeting of the Vestry it was decided that the election should be by those parishioners who paid Church Rates only, and it was held that this resolution was illegal.

Holroyd, J., in his judgment, said, "I think it was not competent to the parishioners to narrow the custom by passing a By Law which would have the effect of making it depend on the will of particular persons whether a person had a right to vote or not."

(2) In regard to the constitution of the Electoral Body.

The second class of cases, and they are numerous, is of those which provide for the constitution of the *Electoral Body*.

In very early days there arose a case which was in some way connected with the Borough of Colchester, but none of the reporters who refer to it, as far as I have found, say what the point in discussion was, nor how it arose. There was, however, a conference of Coke, C.J., and other Judges, and it is stated to have then laid down according to the report in 3 Buls. 71:

"That if there be a popular election of the Mayor and Aldermen in Corporate towns, and this happen to breed a confusion among them, this may be altered by *their* agreement, and by the *common consent of all*, to have their elections made by a fewer number; but not otherwise: but if by their Charter they are to be elected by them all, then this is not to be altered, but by and with the general assent of the whole town: and so by this means to take away confusion."

In 4 Co. 78, *The Case of Corporations*, there is a report of the same opinion of the Judges in a somewhat irregular discussion, and *Jenkins' Cent.* p. 273, gives the effect of this discussion in similar terms.

This opinion had a great practical effect in alter-

ing the constitution of Municipal Corporations, as by degrees the commonalty to a large extent became excluded from the elections. But there was a considerable number of decisions, and very nice distinctions were established.

Accordingly, Lord Hardwicke, C.J., admits in *the K. v. Tomlyn*, C. t. H. 316, that where a Charter directs the election to be by the Mayor, jurats, and commonalty, the body may make a By Law to vest the power of election in any select body.

But it was held by Lord Mansfield in *R. v. Spencer*, 3 Burr. 1833, that an integral part of the electors could not be struck off by a By Law; and Aston, J., in the same case observed that the right of election could not be transferred to different persons, neither could other persons be intermixed with those who have the right of election in them.

It was accordingly held that the governing body of the Corporation could not by a By Law prevent the commonalty from taking part in the elections where the commonalty formed an integral part of the Corporation.—*R. v. Head*, 4 Burr. 2515, which judgment was confirmed by a decision of the House of Lords.—*Hoblyn and others v. The King*, 6 Bro. P. C. 511. There the Charter required the Mayor and commonalty with the Aldermen to elect Burgesses and freemen, and a By Law confining the election to the Mayor and Aldermen was held to be illegal and void.

In *K. v. Holland*, 2 East. 70, Lord Kenyon expressed his opinion that where in a Borough there was a prescriptive right in the Corporate body to admit honorary freemen of the Corporation, it was not competent for the Corporation to make a By Law under which this power would be exercised by a part only or by a select body of the Corporation; and in *Tucker v. The King*, 4 Bro. P. C. 455, it was held that where a Charter granted that the Mayor

and Aldermen of a Borough should nominate four out of the Burgesses or inhabitants of the Borough from whom the Corporate body should choose the Mayor, a By Law that the Mayor and Aldermen should nominate four persons, then Aldermen, or one or more of them, then Aldermen, out of whom the Mayor should be chosen, was held by the House of Lords to be void, but it is not clear from the report upon what ground. The ground urged against the By Law was that it transferred the franchise from the Burgesses or inhabitants at large to the Aldermen.

Again, in the case of *The K. v. Westwood*, 7 Bing. 84, Alexander, C. B., says, "that a By Law displacing from its function any part of a Corporation is invalid."

Notwithstanding these decisions of the Supreme Court of Appeal, a different spirit prevailed with the Courts at a later period. Doubtless the desire to repress the confusion of popular elections, which disturbed the Judges in the reign of King James I., was renewed in the minds of the Judges who presided in our Courts after the revolutions at the close of the eighteenth century.

Accordingly I find it laid down in *K. v. Ashwell*, 12 East. 22, that a By Law which restrained the right of electing Aldermen in a Borough, previously possessed by the body at large, to a select body, is not unreasonable. The Court of King's Bench considered that it is not to be held to be unreasonable, because it is *possible* that some inconvenience might result from it. The inconvenience must be *probable*, and the existence of the By Law, for many years unrepealed, led to a fair inference that no inconvenience had resulted from it, and therefore that it was not unreasonable on this ground.

This decision was followed by *K. v. Bird*, 13 East. 367. There it appeared that a Charter had been

granted to the Mayor and Burgesses, and created them a Corporation, but contained no provision for the election of the Burgesses. It was held that a By Law made by the whole body, whereby the power of electing Burgesses was delegated to a select body of themselves, was good, but so far as it was delegated to a stranger it was bad. Lord Ellenborough said that there was nothing unreasonable in this By Law to the extent approved of.

This general proposition was, however, the subject of discussion in the great case of *The K. v. Westwood*, which was first argued in the Court of King's Bench, then in the Exchequer Chamber, and ultimately in the House of Lords. It is reported in 4 B. & C. 781; and 7 Bing. 1. The judgments pronounced by the Judges were very elaborate, and propounded many propositions of municipal law. It is enough, however, to state the decision, which was this:—that where a Corporation consisted of Mayor, Bailiffs, Aldermen, and Burgesses (of whom the Mayor and Aldermen were chosen out of the Burgesses, and formed a Common Council, and a Charter gave to the Mayor and Burgesses power to elect Burgesses), and the Corporation at large made a By Law vesting the right to elect Burgesses in the Mayor and Common Council, the By Law was good, the Burgesses at large being represented by the Common Council.

The third class of cases refers to the *Candidates* or Members, namely, as to their *qualification* or eligibility.

(3.) As to the qualification or eligibility of Members and Candidates.

Now the general rule is that a By Law to reduce the number of the persons eligible to an office is not valid. A Charter incorporating a Borough by the name of the Warden and inhabitants of G—, directed them to meet on a certain day, and elect a Warden out of the principal inhabitants of the Town.

A power to make By Laws having been given, a By Law was made directing eight assistants to the Warden, to be chosen out of such as had filled a certain office, and that a Warden should be chosen out of these assistants. It was held that this was a bad By Law; that though power existed to reduce the number of electors, the description of the Body out of which the Warden was to be chosen could not be altered. A case of *K. v. Phillips*, 23 Geo. 2, respecting the Borough of Carmarthen, was referred to.—*Lee v. Wallis*, 1 Keny. 292; Say. 262.

But in *Barber v. Boulton*, 1 Stra. 315, the Court of Queen's Bench expressed an opinion that where a Charter prescribed that the Mayor of a Borough should be chosen by the Capital Burgesses, who were twenty-five out of themselves eligible, a By Law enacting that the common Burgesses should select five of the Capital Burgesses out of whom he should be chosen was valid, as it tended to prevent confusion. However, the point was not actually decided by the case.

Again, in a later case, *K. v. Tumwell*, 3 Doug. 207, a different ruling prevailed. There a custom was proved in the Borough of Cambridge to elect the Mayor out of the Aldermen. But a By Law was made that no Alderman should be elected to be Mayor who had served that office within six years, and imposed a fine as a penalty upon any one who accepted the office under those circumstances. This By Law had been in force for many years, yet it was held by the Court of King's Bench to be void, as it narrowed the number of the persons eligible to Corporate offices.

It was contended that if the number of the electors could be diminished by a By Law, it was difficult to see how, upon the same principle, there might not be a reduction of the persons eligible.

Lord Mansfield seems to have felt this argument,

but he answered that "*the case of the Corporations* above referred to" (see p. 104) "was decided on sound policy to avoid popular confusion, but that care had been taken to prevent that case from being carried farther."

The general proposition that the number of the persons eligible to office cannot be reduced by a By Law, is supported by the cases of *R. v. Spencer*, 3 Burr. 1833; *R. v. Cutbush*, 4 Burr. 2204. See also the remarks of Holroyd, J., in *K. v. Westwood*, 4 B. & C. 823; and of Wightman, J., in *Q. v. Powell*, 3 E. & B. 390.

By their Charter the community of a trading Corporation were to elect annually four wardens from the men of the community. It was held that a By Law establishing that the election should be made by a Court of Assistants, elected by the Court itself from the body of the community, would not have been a bad By Law, if made, and from long usage it was to be presumed to have been made.

It was proved that, though the wardens were generally elected out of the Court of Assistants, this had not been done universally, though they were always elected out of the community, and hence it was held that in this case there was no limitation of the persons eligible.—*Q. v. Powell & others*, 3 E. & B. 377.

A Prescriptive trading Corporation were empowered by a Charter of Richard II. to elect a Master *de seipsis* when and as they pleased. The practice for a great number of years had been for the Master Wardens and Court of Assistants to elect the Master usually out of the Court of Assistants, and not out of the whole body. The assistants were, however, qualified for election as the rest of the Company. In some instances persons had been elected who were not of the Court.

From this usage a By Law was presumed to support the election, and the Court of Queen's Bench

held that such a By Law was not bad. If it were to be presumed that the Master, &c., were to elect, and were to elect out of a restricted body, it would be void, and the whole would fail. But the facts did not necessarily raise this presumption.

Then the practice of electing by the limited body was not necessarily part of the By Law, because it might have been a custom existing prior to the Charter.—*K. v. Attwood*, 4 B. & Ad. 481.

In *R. v. Castle*, Andr. 119, 241, a Charter empowered the Mayor, Bailiffs, free Burgesses, and commonalty to assemble and choose one of the free Burgesses, of which there were twenty, to be Mayor. A By Law was made that they should all withdraw and nominate three out of the free Burgesses, whereof one should be elected Mayor. It was contended that this By Law was void, as limiting the number of persons eligible. The Court of King's Bench were not unanimous in their opinion; two of the Judges considered that this By Law only amounted to a regulation as to the mode of election, the other two doubted, and the case was decided on another point.

Number of
eligible Candi-
dates cannot be
increased by
By Law.

But as a By Law cannot reduce the number of the eligible, as above shown, so also the number of the eligible cannot be increased by a By Law.

Thus, where by Charter a trading Company were to elect the Master out of their two Wardens, a By Law made by the Company enabling the election to be out of the Master, Wardens, and assistants by the Master and Wardens was held void.—*K. v. Bumstead*, 2 B. & Ad. 699. See also the remark of Wightman, J., in *Q. v. Powell*, 3 E. & B. 390.

As to personal
qualification.

In these recent remarks I have referred to the proposal to alter the *class* and thereby the number

of eligible candidates, but there is another question whether the *personal* qualification of the candidates can be altered. I have not found any authority upon the point as regards Municipal or Statutory Corporations.

But the point was discussed in the case of *Q. v. The Saddlers' Company*, which passed through the several Courts and was ultimately decided by the House of Lords.

There a Trading Company in the City of London had, by Charter, power to make such By Laws as should seem to them to be salutary and necessary for the good government of the Company, its members and officers, and they made a By Law that "no person who had been a Bankrupt, or had become otherwise insolvent, should be admitted a member of the Court of Assistants of the Company unless it be proved to the satisfaction of the Court that such person after his bankruptcy or insolvency had paid and satisfied his creditors the whole of their debts, or should have established a fair and honourable character for seven years subsequent to such bankruptcy or insolvency, to the satisfaction of the Court, or the majority of them."

This By Law came under the consideration of the Court of Queen's Bench, and that Court held that it was unreasonable and void. It was urged that the Company had no authority to make any By Law as to the qualification of its members and officers, but if they had, that this By Law referring to the solvency of a member was unreasonable.

It was also objected that the By Law was insufficient, as it limited the disqualification to the admission and did not extend it to the election.

The Court of Exchequer Chamber held the By Law to be good; that it was not unreasonable having regard to the nature and constitution of the Society; that it did not unduly restrict the class from which

the assistants were eligible; and that if properly construed it invalidated the election, no less than the admission, of a disqualified person.

The House of Lords decided that the By Law was valid, its validity depending upon the words, *or otherwise became insolvent*, which they construed to mean notorious or avowed insolvency, such as stopping payment or compounding with creditors. If it were construed to signify a mere inability on the part of a tradesman to pay his debts in full it would have been unreasonable and invalid.

The House did not recognise the objection that the By Law limited the number of persons eligible to the office.—*Q. v. Saddlers' Company*, 3 E. & G. 42; 32 L. J. (Q. B.) 337.

In the Court of the Exchequer Chamber it was laid down that there is a distinction between By Laws which exclude a class of persons from an office to which, by the Charter, they are eligible, and those which only ascertain a criterion of fitness, such as having regard to the object of the Charter, is a just and reasonable one. The former class is void, the latter valid.

The forcible argument of Chief Justice Cockburn as to the want of power in the Company to make this By Law to affect the qualification, and the answer given by Lord Wensleydale in the House of Lords, are well worthy of perusal.

Statutory
qualifications.

It must however be noted, that where the qualification is prescribed by Statute there can be no alteration by By Law.

(4.) As to the
mode of elec-
tion.

The fourth class of cases refers to the *mode of election*, which cannot be altered by a By Law, where that mode is settled by Charter or Statute.

Thus: a By Law giving a casting or double vote to the presiding officer at the election of a Corporate

officer, when the votes of the electors were equal, was held to be not legal.—*K. v. Ginever*, 6 T. R. 732.

This was either an alteration of the Charter, or a supplement to it, and neither was open to the governing body.

But a By Law made by the Council of a Corporate city, that a trader therein requiring to be admitted as a freeman of the said city, should be called to appear at three several meetings of the Mayor and other Corporate officers, and be approved of by them before admission was held to be reasonable, and not open to objection as in restraint of trade, or on the ground of the possible arbitrary rejection by the Mayor and officers.—*Green v. Mayor of Durham*, 1 Burr. 127, C. S.; *R. v. Mayor of Durham*, 1 Keny. 512.

The Company of Surgeons in London being empowered to admit apprentices to Surgeons in that city, made a By Law, which required every person proposed to be bound such apprentice to understand the Latin tongue, his ability therein to be tried by the Governors of the Company, or one of them, before his being bound. It was contended that this By Law was bad, as unreasonable. But the Court held that it was so good a By Law that the case was not arguable.—*R. v. Master and Wardens of the Surgeons' Company*, 2 Burr. 892.

As regards Voluntary Associations, there does not appear to be any objection to a By Law made to alter the mode of electing members or officers where there is no deed duly enrolled or registered prescribing the mode. Voluntary Associations.

It is now necessary to revert to a class of By Laws connected with the working of Corporations and Associated bodies, where the Courts of Law have By Laws in reference to the duties of Officers.

been called upon to decide as to their reasonableness.

When the Corporation or the Association has been formed, it is obvious that officers of various kinds are required to carry on the business of the Corporation or Association. As regards officers who are hired or engaged on salaries, it is usual for the governing body to prescribe duties, and enforce them by the ordinary laws applicable to contracts. It is very rare for By Laws to be made applicable to them.

But the 11 & 12 Vict. cap. 63, sect. 37, required Local Boards of Health to make By Laws to regulate the duties of the officers whom they appointed, and such By Laws were required to be duly confirmed. So far as these By Laws operated upon the officers it is hardly possible that any question could be raised as to their being reasonable or otherwise. If the candidate for the office did not approve of any By Law he could withdraw his offer; and if any officer appointed to the office should object he could relinquish the office; or if he refused to comply or resign, the Board could remove him from his office.

By the 38 & 39 Vict. cap. 55, sect. 188, there are to be Regulations and not By Laws, but this will not alter the effect of these observations.

By Laws to
enforce acceptance
of office.

By Laws, however, have frequently been made to compel the members of the body to accept or to hold the office to which they have been elected, to give their attendance at the meetings called for the discharge of the business of the body, and sometimes to pay their contributions towards the expenses of the body.

Such By Laws have been enforced by penalties, and the Courts have been called upon to decide as to the reasonableness of such By Laws.

A By Law was made in the City of London, that

every person elected Sheriff should serve, and should not be discharged unless he came before the Lord Mayor and Aldermen with compurgators, and swore that he was not worth a certain sum of money; and that unless he came before the Court of Aldermen and declared that he would accept the office, and gave bond for its performance, not having reasonable excuse to be allowed by the Lord Mayor and Aldermen, he should pay a certain fine.

An objection that the By Law did not require notice to be given of the election was held to be of no force, the Chief Justice Holt, in his judgment, alleging that all the citizens were bound to take notice of what is done in their body.

It was also held not to be *unreasonable*, on the ground that the Mayor and Aldermen reserved to themselves the power of deciding whether the excuse was reasonable. Lord Chief Justice Holt admitted that, if they allowed the excuse, there was no redress; but held that, if they refused a reasonable excuse, their judgment might be controverted in an action brought for the penalty.—*K. v. Vanacker*, 1 Ld. Raym. 500; Carth. 493.

A Trading Company made a By Law that the Master, Wardens, and assistants should choose so many of the members of the Company into the Livery as should seem most meet and convenient, and that every person so chosen should pay to the Company £31 13s. 4d.; and if he should not accept the choice, or upon acceptance pay that sum, he should forfeit £25, and this was held to be a good By Law. It was not necessary that the By Law should state that the person elected should be competent to hold the office and pay the fee, as it was not to be presumed that any other than fit persons would be chosen. *Vintners' Company v. Passey*, 1 Burr. 235; 1 Keny. Rep. 500; see also *Taverner's Case*, Raym. 446; Trem. P. C. 431.

In *The London Tobacco Pipe Makers' Company v. Woodroffe*, 7 B. & C. 838, it was held that a By Law made by a Company or Guild, that every person chosen Warden of the Company who should refuse to accept the office should pay a fine of £6 13s. 4d., was reasonable and valid.

A By Law, that every Common Councilman voluntarily resigning and laying down his office should pay a penalty of £10, was held to be a good By Law.—*Mayor of Cambridge v. Herring*, 1 Lutw. 402.

These were By Laws passed to secure the acceptance and holding of the office. In the above case of “the Tobacco Pipe Makers’ Company,” it was also decided that—

A By Law made by a Company or Guild, that every Master, Warden, or assistant who should not attend the Courts of the Company should pay a fine, was not *unreasonable* and therefore valid.

By Laws as
to the Expenses
of the Body.

Then with reference to the *expenses* of the Body in the same case of “the Tobacco Pipe Makers’ Company” there was a By Law that every freeman and every journeyman of the Company should pay a certain sum to the Company quarterly, or in default should forfeit double the sum; and it was held to be *unreasonable* and void because it was not shown that any rightful expenditure of the Company required such contributions.

In a subsequent case of *The Tobacco Pipe Makers’ Company v. Loder*, 16 Q. B. 765, in an action on the By Law for the quarterages it was averred that the Company never had any source of revenues other than the moneys receivable under the By Law. It did not become necessary to decide whether this averment would support the By Law, as the action was defeated on another ground.

It had, indeed, been decided in an early case that where the Company fixed by a By Law a sum to be paid on promotion to office, the Courts of Law could not undertake to pronounce any judgment as to the sufficiency or extravagance of the sum so fixed.—*Taverner's Case*, Raym. 446; Trem. P. C. 461.

When Corporate or other bodies meet for the performance of their functions or the discharge of their duties, and much time is spent, the members may require refreshment to keep themselves in a proper state of attention. It is a matter of much controversy in modern times to determine how this is to be obtained. In some cases the local or public rate is charged with the cost, but the Official Auditors, for the most part, have disallowed the charge, and have held that the members must provide the same at their own cost.

By Laws in regard to the providing of refreshments.

It is found, however, that this is a subject which has been sometimes provided for by the governing bodies of Corporations, whether Municipal or Guilds, through the means of By Laws made to operate on their members, and such By Laws have occasionally come before the Courts of Law.

The general object has been admitted to be one for which the provision might be made, and the By Law has been considered as *not unreasonable* in reference to the object contemplated.

Thus in an *Anon.* case in Godb. p. 281, a custom is stated as existing in the City of Norwich that two men should be selected out of the city to make a feast for the bailiffs under penalty of fine and imprisonment, and the Court of King's Bench in the time of King James I. held that the custom was good.

This, indeed, is stated to have been a custom, and the reporter does not set out any By Law founded

upon it. Moreover, no such a penalty could have been supported at the present day. But the case supplies a foundation for the subsequent decisions on By Laws which contemplate a similar object.

A Trading Company or Guild made a By Law that on the day of election of the Mayor and Wardens there should be a dinner, to which every fellow of the Company should contribute, and that any absent fellow who would not pay his share should be fined 3s. 4d. This was held to be a good By Law, and that the penalty was recoverable by distress.

But in an action of trespass brought by a fellow who was distrained upon, the Court ruled that the Plaintiff should succeed, because it did not appear that the apportioned sum had been demanded of him before the distress for the penalty.—*Gee v. Wilden*, 2 Lutw. 1320.

A Company created by a new Charter, and empowered thereby to make By Laws for the benefit of their Corporation, made a By Law that every member of the Corporation chosen Steward at a meeting at the feast of St. John the Baptist should at Michaelmas provide a dinner for the Master, Wardens, and assistants, or forfeit £10. This was held to be *unreasonable* and a bad By Law. It did not appear for what purpose the dinner was made. If it had been for the purpose of assembling the Company to choose officers, or any other thing for the benefit of the Corporation, it had been well enough.—*The Framework Knitters' Company v. Green*, 1 Ld. Raym. 113.

In a later case, *Carter and Others v. Sanderson*, 5 Bing. 79, a similar Company made a By Law to the like effect, for a dinner on Lord Mayor's day, with the addition that the Steward should have an allowance towards the providing of the dinner with a penalty of £20, unless he excused himself by swearing before a Justice that he was not worth £300. The Court of Common Pleas held that an

action for the penalty failed. The Chief Justice Best admitted that a By Law to require a feast to be given might under certain circumstances be good, but considered this By Law to be bad, because it was not shown that there was any business in which the Company were interested to call the members together on the day mentioned. He and the other Judges, however, agreed that there was a fatal defect in the declaration, as it was not alleged that the Company had made any allowance towards the feast, which allowance they held to be a condition precedent.

This case was supported by *The Scriveners' Company v. Brooking*, 2 A. & E. 95. There a Company made a By Law that there should be two dinners annually, one for the Master, Wardens, assistants, and Freemen, on the day when the Master and Wardens were elected, in which election the freemen took no part; the other for the Master, Wardens and Livery when the Lord Mayor was elected; that two persons should be appointed as Stewards to provide the dinners, who should receive certain sums towards the expense and find the residue themselves, and a fine was imposed upon any freeman so appointed who did not accept the office and find the dinners. It was held that the By Law was *unreasonable* and bad. There was nothing to show that there was business to be transacted by the persons for whom the dinners were to be provided. As to the first, the freemen who were to partake of the feast took no part in the election, and the person to provide the feast might not actually be present at it. As to the dinner on the Mayor's election there was nothing to show that any business was done by the Company on that day.

Then the refusal to accept the office was not material because the Stewards had no duty to perform but to provide the dinners.

The point which was discussed in these several cases was whether it was reasonable that the persons to whom the By Law applied should be called upon to provide the refreshment for the body, and the question was asked whether there was any business of the body to be transacted at the time which rendered the refreshment necessary.

So far as trading or voluntary Associations are concerned, it may be admitted that a By Law of this nature would be recognised as reasonable and lawful, but this proposition may be doubted as regards Municipal Corporations, where the acceptance of office is not generally a voluntary act.

In none of the cases has it been objected to the By Law that the expense of the refreshments should be borne by the funds of the Corporate body, and therefore that the By Law was unreasonable, though where the accounts of the Corporate body* are not subject to efficient audit, it is notorious that a large amount of their revenues is expended in festivities, hospitality, and refreshments.

By Laws in
restraint of
Trade.

I now come to consider a subject which has during the course of the last three centuries been a fruitful cause of litigation, viz., the By Laws made *to regulate Trade*.

When a guild or trading Company was established, the Charter by which it was constituted gave expressly or by necessary implication a certain control over the trade in whose name or for whose interest the Corporate body was constituted. The governing body accordingly made By Laws to regulate the Trade.†

* In *Q. v. Saunders*, 3 E. & B. 763, is a discussion as to the payment for refreshments to Justices out of the county-rate.

† I do not wish to break the text above, but it would not be right in dealing with this part of my subject to omit a reference to

Again, certain Municipal Corporations, whose existence depended upon prescription, claimed by custom a right to make By Laws to regulate all or some of the trades in their Boroughs. Where the Corporation existed by extant Charter, that Charter occasionally contained words which either directly or impliedly

the celebrated case of *Mitchell v. Reynolds*, reported in 1 Peer. Will. 181, and 10 Mod. 130. Parker, C.J., there gave a general view of the cases relating to the restraint of trade, and on the third head, viz., those relating to *By Laws*, he made the following remarks: "There are several ways. 1st. To exclude foreigners; and this is good if only to enforce a precedent custom by a penalty: Cart. 68, 114; 8 Co. 125. But where there is no precedent custom such By Law is void: 1 Roll. Abr. 364; Hob. 210; 1 Buls. 11; 3 Keb. 808. But the case in Keble is misreported, for there the defendants did not plead a custom to exclude foreigners, but only generally to make By Laws, which was the ground of the resolution in that case. 2nd. All By Laws made to cramp trade in general are void: Moor. 576; 2 Ina. 47; 1 Buls. 11. 3rd. By Laws made to restrain trade in order to the better government and regulation of it are good in some cases, viz., if they are for the benefit of the place, and to avoid public inconvenience, nuisances, &c., or for the advantage of the trade and improvement of the commodity: Sid. 284; Raym. 288; 2 Keb. 27, 873; and 5 Co. 63; which last is upon the By Law for bringing all Broad Cloth to Blackwell Hall, there to be viewed and marked, and pay a penny per piece for marking. This was held a reasonable By Law, and indeed it seems to be only a fixing of the market, for one end of all markets is that the commodity may be viewed; but then they must not make people pay unreasonably for the liberty of trading there. In 2 Keb. 309, the case is upon a By Law for restraining silk throwsters from using more than a certain number of spindles, and there the By Law would have been good if the reasons given for it had been true." Speaking afterwards of involuntary restraints of trade, he said: "The first reason why such of those as are created by By Laws generally are void is drawn from the encouragement which the law gives to trade and honest industry, and that they are contrary to the liberty of the subject. Secondly, another reason is drawn from *Magna Charta*, which is infringed by these acts of power. That Statute says, *Nullus liber homo, &c., disseisetur de libero tenemento vel libertatibus vel liberis consuetudinibus suis, &c.*, and these words have been always taken to extend to *freedom of trade*. But none of the cases of customs or By Laws to enforce these customs are within any of these reasons, for here no man is abridged of his liberty or disseised of his freehold. A custom is *Lex Loc*i, and foreigners have no pretence of right in a particular society to be exempt from the laws of that society."

gave the governing body power to make such By Laws.

When in any of these cases a By Law was made, the Courts of Law were often called upon to decide whether the By Law was reasonable or not. It was a ruling principle with the Courts to distinguish between what would operate as a restraint of trade (which the Judges wisely saw was a detriment to the common good of society), and what was only a regulation of the trade, the propriety or advantage of which was a matter for the discretion of the body who made it.

But the Courts found themselves bound to admit that the general rule which they had adopted in this matter was frequently controlled by custom, and they were compelled to allow that trade might be restrained by By Laws, founded upon the custom in the particular locality, though but for such a custom the restraint would be illegal.

Effect of
custom.

The cases in which this custom came under discussion were those where it was sought to exclude persons from exercising trades, arts, mysteries, or occupations in Boroughs to which they did not belong, and there were various interpretations as to this word *belong*. If the custom was established, and there was seldom much difficulty in proving it, the Courts were concluded, and bound to hold the By Law good; but if the proof failed, they rejected the By Law as unreasonable and therefore invalid.

The authorities to establish these propositions are as follows: *Mayor of Colchester v. Goodwin*, Cart. 68, 114; *Mayor of Bedford v. Fox*, 1 Lutw. 562; *Wood v. Searl*, Bridg. 139; *Mounger v. Clare*, 3 Keb. 808; *Mayor of Winchester v. Wilks*, 6 Mod. 21, Salk. 203; *Bodovic v. Fennell*, 1 Wils. 233; *Woolley v. Idle*, 4 Burr. 1951; *Parry v. Berry*, Comyn, 269; *Mair v. Munday*, Say. 182; *Harris v. Wakeman*, Ib. 254; *K. v. Churchwardens of Thame*, 1 Stra. 116; *Bosworth*

v. *Herne*, C. t. H. 408; *Harrison v. Godman*, 1 Burr. 16; *K. v. the Sheriffs of York*, 3 B. & Ad. 781.

I do not set out the cases in full, because the Legislature has intervened, and by express enactment put an end to all these customs and claims as regards Municipal Corporations.

The 5 & 6 Will. 4, cap. 76, sect. 14, reciting that "whereas in divers cities, towns, and Boroughs, a certain custom hath provided, and certain By Laws have been made that no person not being free of a city, town, or Borough, or of certain guilds, mysteries, or trading Companies within the same, or some, or one of them, shall keep any shop or place for putting to show or sale any or certain wares or merchandise, by way of retail or otherwise, or use any or certain trades, occupations, mysteries, or handicrafts for hire, gain, or sale within same," enacted that "notwithstanding any such custom or By Law, every person in any Borough may keep any shop for the sale of all lawful wares and merchandise by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft for hire, gain, sale, or otherwise, within any Borough."

Determined
in Municipal
Corporations
by 5 & 6 Will.
4, cap. 76.

This Act only applied to the Municipal Boroughs named in it. There are many small boroughs of ancient origin not included in it, but probably no such customs exist therein.

The City of London is, however, exempt, and in that City these customs and By Laws founded upon them are still in force.

Still remain
in London.

In *The City of London's Case*, 8 Co. 251, there is an elaborate argument to prove that a By Law prohibiting non-freemen from carrying on trade in the City of London under a penalty was reasonable and beneficial.

The case is reported in 2 Brownl. 284, by the name of *Waggoner v. Fish, Chamberlain of London*, and it appears thereby that the Common Council of London,

relying upon an ancient custom, made a By Law in the fourth year of James I. that no Foreigner (*i.e.* Non-Freeman) should use any trade within the City, nor keep any shop therein under a penalty of Five Pounds, to be paid to the Chamberlain; and because the Plaintiff kept a shop and used the mystery of making candles, he was sued for a breach of the By Law. It was decided that the By Law, being supported by the custom, was valid; but because it was alleged that the Plaintiff used the trade of a Tallow-Chandler, but did not allege that he sold candles, the breach of the By Law was not proved, and the Plaintiff was discharged.

In *Trem. Pl. C. 367*, is a return to a Habeas Corpus on behalf of one King, sued in the Court of the City of London for breach of this same By Law in setting up the trade of a Working Goldsmith and Jeweller.

In *Clarke v. Denton*, 1 B. & Ad. 92, the custom was alleged to be that no person not being free of the City, might sell or put to sell any wares within the City or the liberties by retail, or keep any shop or other place for show, sale, or putting to sale of wares by retail, or for use of any art, trade, occupation, mystery, or handicraft whatsoever; and this was held to be a sufficient ground for a By Law forbidding any non-freeman to show, sell, or put to sale wares within the said City, liberties, or *suburbs*, or to use any trade, &c., within the same, under the penalty of £5.

It was fully admitted that this By Law could only be supported by the custom, and this was confirmed by the opinion of the Court in the subsequent case of *Clarke v. Le Cren*, 9 B. & C. 58.

In *Player v. Bringham*, 3 Keb. 9, a By Law of the City of London, that no person should exercise the trade of a Broker therein until he had been sworn by the Aldermen of the City, was questioned, but no

decision is reported there. The By Law is set out fully in Trem. 406, where the return to the writ of Habeas Corpus directed to the Lord Mayor and the City is printed.

In Hard. 56, a case in 4 James 1 is cited of a By Law, that none in London should receive a journeyman not free of the City, and it was held to be valid, for though it tended to restrict the liberty of the subject and abridge trade, it was for the better government of trade in general.

And this By Law was supported in modern times in the case of *Shaw v. Poynter*, 2 Ad. & E. 312, where the terms are set out, namely, that no artificer or trader by retail free of the City of London should set on work in manual occupation within the City any person not free of the City, or an apprentice to a freeman, under a penalty.

The Court held that this was only rendered valid by the custom.

In Trem. Pl. C. 373, there is a precedent of proceedings in the case of *The Chamb. of London v. Drinkwater*, in Jam. 2, where the Chamberlain sued in the Court of the City of London for a penalty incurred by the Defendant for exercising the business of a porter, by landing merchandises in that City, not being free of the Porters' Company, contrary to a By Law made by the Council.

The By Law is set out, it is very long, and is framed to maintain the customary right to metage and portorage of goods and wares brought to London by water, which was claimed by the City. There is the writ of Habeas Corpus to the Corporation to bring up the body of the Defendant, and their return showing that he had been sued in the Court of the City for the penalty convicted, and in default of payment sent to prison.

But though the entire Corporate Body of the City established this general custom, and supported their

Where made
by Companies
in London.

By Law thereby, the attempt of individual Companies or guilds have not been so successful.

Thus in *Clarke v. Le Cren*, 9 B. & C. 58, a By Law made by the Painters' Company that no person shall exercise the art of a painter within the City of London not being free of the Company of painters, was held to be a By Law in restraint of trade, and therefore void unless there was a special custom to support it, a general customary authority to regulate trade in the City not being deemed enough.

And accordingly in *Clark, Ch. of London, v. Compton*, 4 L. J. R. 49, 7 D. & R. 597, an action on a By Law by the Pewterers' Company against a stranger for exposing pewter wares in the City of London for sale, not being free of their Company, failed, because no custom of the City to support it was alleged.

Corporation
control over
Companies.

The Corporation of the same City claiming a customary right to regulate all trades within it, made By Laws to affect the conduct of the Companies and Guilds therein with reference to the admission of members. Thus it was held that they could make a By Law to restrain persons exercising a chartered trade from becoming members of another livery Company than that of their own trade.—*R. v. Sir Thomas Harrison*, 3 Burr. 1322. This was deemed to be only a regulation of the trade.

But where such a By Law was made subject to a penalty, and the proceedings in an action removed into the Queen's Bench did not show any custom to restrain trade vested in the Corporation of London, the By Law which did not purport to be for the regulation of trade, but only for the benefit of the Company referred to was held to be void.—*Harrison v. Godman*, 1 Burr. 12.

In an earlier case a By Law was made that no person should exercise the trade of a joiner in the City who was not free of the Joiners' Company,

under a penalty of £10. It appeared that a person who exercised the trade of a joiner had served a member of another Company as an apprentice, and had been admitted into this other Company. He applied, however, to be admitted to the freedom of the City, and this was refused, because he was not free of the Joiners' Company, and the Court of Queen's Bench decided that this was a valid objection. It was considered to be a good By Law, being made *in regulation of trade*, and to prevent fraud and unskillfulness, of which none but the Company that exercise the trade can be judges.—*Wannell v. The Chamberlain of London*, 1 Stra. 675.

And in *The K. v. Harrison*, 1 Wm. Black. 272, a By Law of the City of London, that a Butcher should be free of the Butchers' Company, was held to be valid, the Court of King's Bench refusing to compel the admission of a person to the freedom of the City who had served as an apprentice to a member of another Company, and had been admitted a member thereof.

Whether this rule prevails now in the City of London I doubt, as persons are members of City Companies who are certainly not of the trades by which those Companies are named.

On the other hand, a By Law made by the Corporation of London to compel all keepers of dancing-schools to become freemen of the Company of Minstrels or Musicians was held to be bad in *Robinson v. Grosco*t, Comb. 372, and 2 Mod. 104, as being unreasonable. Holt, C.J., said that the City might create a Company of Dancing Masters and compel all such persons to be members of such Company, but could not compel them to be members of another Company.

Under this division of my subject I may notice the following case.

The Corporation of a City had by prescription a

right to hold a Court for hearing and determining pleas, and a select body of the Corporation had power to make rules to regulate the practice in such Court. In the reign of Philip and Mary that body made a By Law that only four persons should be admitted to practise as attorneys in the Court, and there had been no more appointed from that time until 1832, when an attempt was made to open the Court. It was decided, however, by the Court of Queen's Bench that this was not an unreasonable By Law, being in conformity with usages elsewhere which had been recognised by the various statutes relating to attorneys. It could not be said to be in restraint of trade, because attorneys had no immemorial right to appear and practise in Courts of Law, their privilege having been given to them by the Statute of *Merton*, 20 Hen. 3, cap. 10.—*The K. v. the Sheriffs of York*, 3 B. and Ad. 770.

By Laws to regulate conduct of traders in business.

Thus far I have been considering By Laws affecting the general right of trading in particular places, but other governing bodies have also made By Laws to regulate the mode of carrying on the trade or of exercising the art by persons authorised to trade.

Such By Laws have generally been made by Companies or guilds, but occasionally they have been made by a Municipal Corporation where that body claimed a prescriptive right to regulate trade.

The Common Council of the City of London, acting under their customary right to govern the different companies of trades in the City, made a By Law that the Bricklayers should not plaster with hair and lime, but with lime and sand only, and that plastering with hair and lime should belong to the Plasterers only, under a penalty recoverable by the Chamberlain. This was held to be

a good By Law, as it only operated as a regulation of trade, though if it had been shown that the plastering with hair and lime had belonged to the Bricklayers, this right could not have been taken from them by the By Law.—*The Bricklayers and the Plasterers*, Palm. 395; 2 Roll. Rep. 391. In the argument as reported in Rolle, various precedents were cited of similar By Laws made by the Council between different trades in the City, as that Cobblers should not vamp boots nor make goloshes, but only the Shoemakers; and that the Arrowmakers should not make bows, nor the Bowyers arrows; and that the *Brown Bread* bakers should not bake *White Bread*.

This last By Law is reported in *Hardress*, 56, where it was held to be valid, as not restraining but only ordering, *i. e.* regulating trade, and a precedent, temp. Hen. IV., of one *Gascoyne's* case was cited.

In *Freemantle v. The Company of Silk Throwsters*, 1 Lev. 229; S. C. 2 Keb. 309 (where the names are reversed, and rightly), it was held that a By Law by a trading Company in the City of London imposing a limit on the number of spindles to be used weekly by a member of the Company was good. It was said that it was not in restraint of trade, but tended to prevent a monopoly, and to secure equality of trade among the members.

The statute 20 Chas. 2, cap. 6, passed in 1668, rendered this By Law void, and prevented the Company from making any such By Law in the future.

On the other hand, some By Laws, where apparently the object was to regulate the trade, have been held void, either as tending to create undue preference and monopoly, or to restrain trade unnecessarily. Where illegal.

Davenant v. Hurdis is a case reported in Moo. 376, at very great length, containing the arguments of

Coke, Attorney-General, and Moore himself, very fully.

There the Company of Merchant Taylors in London made a By Law to require every member of the fraternity to put forth one moiety of his broad-cloth to be dressed by some member of the said Company, upon penalty of 10s. for every piece of cloth put out contrary to the By Law. This was held to be illegal, as tending to create a monopoly in the members of the Company.

Coke, in his 2nd Inst. 47, notes this case, and states that the By Law was against the liberty of the subject, because every one hath freedom to put his clothes to be dressed by whom he will. It is also noticed in 1 Roll. Abr. 364.

The Gunmakers' Company in London, incorporated by a Charter of Chas. I., made a By Law that no member of the Company should sell the barrel of any hand gun ready proved to any person of the trade not a member in London or within four miles, and that no member should strike his stamp or mark on the barrel of any person not a member of the Company, under a penalty of 10s. for each offence.

The Court of Common Pleas held this to be a void By Law, and Willes, C.J., reports his own judgment. The objection was that it was in restraint of trade, and no adequate reason was shown for the restraint, nor any consideration for the same.

It was laid down that all general restraints of trade are illegal, but that restraints particular as to time and place are good, if sufficient consideration is shown for the restraint.—*The Gunmakers' Company v. Fell*, Willes, 384.

An anonymous case is reported in Godb. 107, in which a By Law in the City of London, that no person should bring, sell, or use any sand within the City and suburbs of London which was not taken out of the River Thames under certain pecuniary

penalties, was held in 29 Eliz. by the Court of Queen's Bench to be void. The reason appears to have been that it was an unnecessary restraint of trade.—See *Raym.* 293.

Hitherto I have referred to By Laws by Corporations or Guilds in reference to this class of cases. But it must be noticed that there may be bodies associated for some special purpose of a mutual profit, and they may make By Laws to restrain their members in the exercise of the trade.

In private Associations upon their members.

Thus a By Law made by a prescriptive Company to prevent one of their members from carrying on the trade separately at a different place from that of the Company's domicile, on his own account, was decided to be valid.—*K. v. The Fishermen of Faversham*, 8 T. R. 352.

Reference may here be made to the somewhat complicated case of *Hills v. Hunt*. 15 C. B. 1, where a regulation made by a governing body as to the mode in which their members should carry on their business was held to be *unreasonable* and void.

Acting, as it seems, under their power to provide for the good government of the City or Borough, or for the due regulation of some particular trade, Corporate Bodies have made By Laws to prevent frauds in the trades generally or in particular trades, and a few have come into discussion before the Courts.

For the prevention of Frauds.

In *Hardress* 56, reference is made to the *Chamberlain of London's Case*, 5 Co. 63. A By Law that every man shall bring his cloth to such a place in London to be searched and examined as to its goodness, and pay 1d., was supported because it tended to the prevention of fraud and falsehood.

In *Roll. Abr.* 365, a By Law in the City of London that no one should use a Hot press under a penalty,

was held to be a good By Law, partly because it tended to diminish the risk of fire, and partly because it prevented fraud, the Hot press being used to give a false gloss to linen and cloths.—*Edwards' Case*, 13 Jam. 1.

By Laws as
to payment of
tolls or dues in
respect of
trades.

Where ancient Corporations have been subject by custom or by Charter to the performance of duties, and in consideration thereof have been entitled to compensation in the shape of tolls, or dues, or fees, they have made By Laws to provide for their rights, and those By Laws have come for consideration as to their validity.

Thus, where by custom the City of London was bound to keep a weighing beam to which strangers could bring their goods to be weighed, the Corporation made a By Law, that if any stranger who sold goods usually sold by weight did not bring them to this beam to be weighed he should forfeit the sum of 13s. 4d. This was held to be good as a reasonable By Law, notwithstanding that in many cases goods might be sold by the lump, so that weighing was not required. And it was held further, that the sum mentioned was not unreasonable, it being only a penalty to enforce the weighing, whereas if it had been a charge for the weighing it might have been otherwise.—*Corporation of London v. Barnardiston*, 1 Lev. 14; 2 Sid. 178. *Player v. Archer*, 1 Lev. 105, 120. See also *Trem. P. Cr.* 397.

As to the right of Metage and Portage in the same City and the By Laws thereon, see *Trem. P. C.* 366.

Under this head, perhaps, may be classed an ancient case of *The Corporation of Gravesend v. Edmunds*, 2 Brownl. & G. 177. The Corporation of Gravesend claimed a prescriptive right to a Ferry from that place to London, and to make By Laws for the government of the Ferry. It seems that the watermen took their turn with their

boats, but a barge was provided by the Corporation, and the Corporation made a By Law that no waterman should take any fare until the barge had taken on board so many passengers as would make up the sum of 4s., upon pain of paying to the Corporation 2d. for every passenger taken on board before the barge was filled. The Court of Queen's Bench (Coke, C.J., and Winch, J.) held that this By Law not being supported by any custom to give pre-eminence to the barge was invalid.

It appears, however, from 1 Roll. Abr. 561, *Customs*, that the Corporation had a prescriptive right to provide this barge, and that no stranger could transport any person to London without the leave of the then Corporation of Watermen at Gravesend.

As these trading Companies or guilds have sought to restrict persons from trading in their Boroughs who were not members of their own body or inhabitants of the place, so they endeavoured, though without success, to keep down the number of competitors for their trade by By Laws relating to the apprentices to their respective trades. This is illustrated by several cases.

By Laws
respecting
Apprentices.

In *Norris v. Staps*, Hob. 210; S. C. Mo. 869; Hutt. 5; 1 Brownl. 48; 1 Roll. Abr. 364, it was held that a By Law by the Company of Weavers in Newbury, acting under a Charter, prohibiting every person from using the trade of a weaver in that town unless he had been an apprentice therein for five years before their By Law, or were admitted into their Company, was invalid, being *unreasonable*, and having no custom to support it. According to the report in Brownlow there were several other objections, and it does not appear upon which the judgment proceeded.

The case of *The Taylors of Ipswich v. Sherring*,

1 Roll. Rep. 4; 1 Roll. Ab. 364; Godb. 253; 11 Co. 53. was as follows:—

The Master and Wardens of the Company of Clothworkers brought an action of debt for that, acting under a Charter of King James I., they had made an ordinance that no person should be allowed to exercise the trade of a Clothworker or Tailor in the town of Ipswich unless he proved before them that he had been apprenticed for seven years, and *had been admitted by them to be a sufficient workman*; under a pecuniary penalty payable to the Corporation. It was urged that this constitution or ordinance was unlawful, and the Court so determined. They said that the King might make Corporations, and grant them the power to make ordinances for the ordering and government of any trade, but they could not make a monopoly, for that is to take away free trade, which is the birthright of every subject. Here, beyond the service as an apprentice which was regulated by the statute of Elizabeth, they prevented the person from working until he had presented himself before them and received their approval, which was an improper restraint.

The two following cases occurred in more recent times.

The first is the case of the *K. v. Wardens of the Cooper's Company of Newcastle-upon-Tyne*, 7 T. R. 513. There the By Laws made by a Company in a Corporate City imposed a restraint upon the members of the Corporation in respect of the number of apprentices which they could take, and it was held to be illegal and void.

And in a later case, the *K. v. Tappenden*, 3 East, 186, a Corporate Company established immemorially to trade for their mutual benefit in partnership, had by custom a right to make By Laws for the reasonable restraint and regulation of the number of apprentices to be taken by the Freemen of the Company

who participated in the profits. The Company made a By Law restricting the qualification of the apprentices with the view of reducing their numbers. It was held that this was a bad By Law, as the Company had no power to alter or restrict the qualification of the apprentices.

I may also observe that the statute 20 Chas. 2, cap. 6, enacted that no By Law made or to be made by the Company of Silk Throwers of the City of London should limit or confine any freeman of the said Company to take a less number than three apprentices at any time.

There had doubtless been some decision of the Courts which had upheld such a By Law, probably on the ground of custom.

Corporations and other bodies have been empowered to make By Laws for the more prompt and convenient suppression of Nuisances. Public Nuisances are punishable by indictment, and occasionally by proceedings in Courts Leet, but it has been found advisable that power should be given to Local Authorities to make By Laws to repress nuisances, trifling in themselves, but when accumulated, calculated to produce much mischief.

By Laws for
the suppression
of Nuisances.

These sometimes arise out of the exercise of trades and businesses, and the questions, therefore, have been asked whether the Local Authority have acted in framing their By Laws relating to such subjects so as to restrain trade unnecessarily, or only so as to prevent the creation of injurious nuisances. The Courts of Law have had, therefore, to consider whether any such By Law under discussion was or was not *reasonable*, having regard to its object.

In *Anon.* case, in March 15, it was held that the Mayor and Corporation of London might by custom prohibit a person from setting up a Tavern, or a

Brewhouse, or a Tallow Chandler's shop, in any particular place within the City, where in their judgment the business would be a nuisance.

This ruling is reported in the time of Charles I., and the reporter treats it as depending upon a custom only. But in *Bosworth v. Herne*, C. t. H. 409; And. 91, Lee, C.J., describes it as a By Law, and holds it to have been valid. A similar force is attributed to it elsewhere.

In the case before that learned Judge he said, "No doubt the general rule of By Laws is that they must be *reasonable*, and not prejudicial to the King or subject. But when the subject-matter of a law is the prevention of *nuisances*, the consideration must be upon the convenience in general, taking in the Crown, the party, and the people; and where the general convenience is greater than the inconvenience, the By Law may be proper and reasonable."

In the case of *Pierce v. Bartrum*, Cowp. 269, the Corporation of the City of Exeter made a By Law which prohibited the slaughter of a bull or ox within the city; and it was held to be a good By Law, because it did not absolutely restrain the trade of a butcher, but only regulated its exercise, and prevented the nuisance which would arise from the slaughter of the beast within the city.

Two recent cases relating to the keeping of animals in themselves likely to cause nuisances, show how this property may be violated, and how complied with.

In the Borough of Newport (Isle of Wight) the Town Council made a By Law that if any person should keep any swine *within the Borough* from May 1 to October 31, he should forfeit a sum of £5. It was held that this By Law was invalid, being too general; whereas, if it had been "kept so as to be a nuisance," it might have been sufficient.—*Everett v. Grapes*, 3 L. T. 669.

But where a Local Board in a Suburban District

made a By Law under 21 & 22 Vict. cap. 98, sect. 32, that "no occupier of any premises within the district shall keep any pigs *within the distance of 100 feet from any dwelling-house*, the Court of Queen's Bench held that in a populous place such a By Law was *reasonable*, and that it was not necessary to prove that the pig in any particular case was kept so as to be a nuisance injurious to health.—*Wanstead Board of Health v. Wooster*, 37 J. P. 404.

This has been supported by a subsequent decision of *Tong Street Local Board v. Seid*, 38 J. P. 757.

The By Law there was as follows:—All occupiers of yards, &c., where horses, &c., are kept, shall provide upon such premises, to the satisfaction of the Local Board, or their authorised officer, a covered receptacle for dung, &c., and a trapped drain for carrying off all urine, &c., from such premises.

There was an additional provision as to the removal.

In proceedings against the occupier of such premises who had not provided a receptacle and drain, the Justices refused to convict, because it was not proved that the manure and refuse were kept on the premises so as to be a nuisance *injurious to health*, and expressed their opinion that if this was not required to be proved the By Law was *unreasonable*. But the Court of Queen's Bench overruled this decision. They held that no such proof was necessary, and that the defendant ought to have been convicted.

A By Law by a Town Council providing for unwholesome food will be found hereafter.—*Shillito v. Thompson*, L. R. 1 Q. B. D. 12.

Where in a town a market has been held immemorially, so that articles were exposed for sale in different places indiscriminately, a Local Board, who had become the owners of the market, made By Laws to confine the sale of different kinds of articles to fixed places in the town, to prohibit the indiscriminate sale as theretofore which led to nuisances. This was

held to be a valid and *reasonable* By Law.—*Savage*, Appt., *Booth*, Resp., 15 C. B. (N. S.) 287.

But the care which is required in making By Laws for the prevention of nuisances is shown in the following recent case.

A By Law made by a Local Board prevented persons from throwing skins upon any part of the ground occupied by the market, or the immediate approaches, or in any cart standing thereon, *without being authorised so to do by the superintendent of the market*. This was held to be too general, and therefore bad, as in restraint of trade.—*Wortley*, Appt., *Nottingham Local Board*, Resp., 21 L. T. (N. S.) 582.

So that here, also, the restraint must not be too general, though the object be to prevent nuisances.

Overcrowding
of streets.

One species of public nuisance, namely, the *overcrowding of the public streets* by vehicles, has been the subject of several By Laws and much litigation in the City of London.

That Corporation having the government of a City where the streets and thoroughfares were very narrow and confined, found the growing traffic a cause of great discomfort and disorder; and in the early part of the seventeenth century, and in successive periods afterwards in that century, made many By Laws to regulate and restrain it within what they considered reasonable bounds.

The Common Council made a By Law which imposed a limit of the number of 420 upon the cars and carts which should be worked within the City, and required that every such car and cart should be licensed by an appointed body upon payment of an annual sum. The body to license was changed by the different By Laws, but ultimately the Governors of Christ's Hospital were constituted the licensing body. A fine was imposed upon every person not licensed who worked the car or cart within the City.

In the first form of this By Law it was held to be illegal as an *unreasonable* restraint on the general freedom of trade, and as only framed for the profit of the body to whom the fine was to be paid.—*Payne v. Haughton*, 1 Roll. Abr. 364.

It was reframed, and its validity was disputed and discussed in a great many cases in the Courts of Law with varying success, according to the numerous decisions reported by the reporters of the latter part of the 17th century. It is to be gathered from the whole of them that the By Law was ultimately held to be substantially valid, as not framed to restrain trade *unreasonably*, but to provide conveniently for the traffic of the City, and to restrain the nuisance of overcrowding. The cases reported or cited are *Player v. Jenkins*, 1 Sid. 284; 2 Keb. 27; *Player v. Stowell*, and *Player v. Osborne*, 2 Sid. 105; 2 Keb. 873; *Player v. Jones and Edwards*, 2 Keb. 490, 501; *Player v. Broadnoe*, 3 Keb. 10; 2 Ventr. 195; and *Player v. Vere*, Raym. 280, 324. See also Trem. P. C., 387, 389.

It is clear that the By Law was ultimately established, as it was renewed in 1829; the previous penalty for the breach being raised to £5, instead of the fine imposed by the former By Laws. The reservation of the penalty to the Hospital had been repealed.

The By Law was questioned in the Court of King's Bench in 1831, but it was there upheld as being supported by the ancient custom, and objection having been taken to the licensing of the carts being delegated to the governors of Christ's Hospital, the Court held that the Corporation could not license the carts themselves, and therefore must authorise some one to act for them. Hence, though it did not appear why those governors were appointed, yet it must be supposed that there were good reasons for the Corporation making such appointment.—*Shaw v. Pope*, 2 B. & Ad. 465.

But though the City was thus successful in dealing with cars and carts, the Corporation was not equally successful in regard to Hackney Carriages.

It appears that in the 31st Charles 2, they made a By Law which, reciting that great inconvenience arose from the excessive number of *Hackney Coaches or Carriages* plying in the City, enacted that they should not exceed the number of 400, that the carriages to that number should be licensed by the Mayor and Aldermen of the City; and that any person plying with an unlicensed hackney carriage should pay a penalty of 40s. No custom was alleged to support this By Law. In Skinner's Rep. 371, there is a report of his argument in a case of *Robinson v. Watkins*, before the Court of King's Bench, against the validity of this By Law. His objection is that it was an *unreasonable* restraint of trade; and he distinguished it from the cases of the carts, because the By Law applicable to them was supported by an ancient custom, which gave force to the By Law; whereas, as hackney carriages were a modern invention, there was no custom by which they could be governed.

He reports that the case was adjourned, and afterwards settled in Parliament, but that the City never thought fit to stir further in it. A further report of the case is in 4 Mod. 226.

On the other hand, apparently with the same view of preventing nuisances in the streets, the Corporation made a By Law in 15 Charles 2, that no drayman or brewer's servant should be abroad in the streets with his dray or cart after one o'clock in the afternoon between Michaelmas and Lady Day, and from thence after eleven in the forenoon, under a penalty of 20s. This was held to be a valid By Law, being only a regulation of trade.—*Bosworth v. Hearne*, 2 Stra. 1085; C. t. H. 405; Andr. 91.

It appears to have been passed to prevent the

nuisance arising out of the traffic of such drays at inconvenient hours.

Again, where a By Law operates as a restraint upon the trade or action of individuals, it may be sometimes justified as being made with the view of preserving *order*, and as a *measure of police*. To preserve Order.

There is a report of a case in an ancient Reporter which appears to illustrate this proposition, although certainly the decision could not now be supported—it is *Bourner's Case*, Hardr. 56.

A By Law was made in a Leet that no one should receive any to inhabit within it who was not born in the Leet, or had not inhabited there for three years, unless he brought a testimonial of good behaviour and showed it to the constable. This was held to be a good By Law, although against the general liberty of the subject, by which any one may go and live where he pleases.

The case occurred in 6 James 1, and the By Law was probably made to repress vagrancy. It appears to be the same case as is reported in Lane 55, though the description of the tenant is more general.

But the By Law made for the purpose thus stated must be *reasonable* in itself, and not go beyond what is necessary to effect the object. This is shown in a recent case.

The Town Council of a Borough, acting under the powers contained in a Charter, and under 5 & 6 Will. 4, cap. 76, sect. 90, made a By Law that no person should erect any booth for the purpose of a show or public entertainment in any public place in the Borough without leave from the Mayor, which should not be given at any other time than during the annual fairs, if three inhabitant householders residing within 100 yards of the place intended to

be used should have previously memorialised the Mayor, in writing, to withhold such licence; and that any such licence given at or for any other time than during the fairs, should be revoked by the Mayor on a similar memorial, to be presented within 48 hours after the building of the booth; the revocation to be notified forthwith to the person employed or interested in the building. The person erecting or continuing the booth was subjected to a fine of £5.

The Court of Queen's Bench held this By Law to be *unreasonable* and void. It enabled three persons at their own will and pleasure to order the Mayor to remove the booth, and by the use of the general terms, "of any booth," it would apply to a booth erected for the purposes clearly not unlawful.

Though stated to be a regulation of police, it was, in fact, a restraint of trade, and as whether for purposes of police, or for the regulation of trade, a By Law must be reasonable, so in either point of view this was not so.—*Elwood v. Bullock*, 6 A. & E. 383.

Reasonable-
ness in By
Laws made
under Statutes.

Passing from the Municipal and Trading class, I have to notice that in By Laws made under Statutes, the Courts have required due attention to be paid to what is *reasonable*, and the following cases have occurred in respect of By Laws made by Sanitary Authorities.

The 21 & 22 Vict. cap. 98, sect. 34, empowered a Local Board to make By Laws as to the giving of notices, and as to the deposit of plans and sections by persons intending to lay out streets or to construct buildings. Under this provision a Local Board made a By Law that "before beginning to dig or lay the foundation of any new building, a written notice thereof of *one month* at the least shall be left with the Clerk at one of the monthly meetings of the

Board, accompanied with plans and sections, under a penalty." It was held by the Court of Exchequer that this was not *reasonable*, as the Local Board could not lawfully prevent the owner from building during the month. If the building was not in accordance with the By Laws applicable to the building, the Local Board, it was said, could alter it or pull it down.—*Hattersley v. Burr*, 4 H. & C. 523.

But the Court of Queen's Bench in a subsequent case of *Hall v. Nixon*, 44 L. J., (M.C.) 51; L. R. 10, Q. B. 152, declined to follow this decision. There a Local Board had made a By Law requiring that every person intending to erect a new building should give 14 days' notice to the Local Board of his intention, and deliver plans to them at their office, and this By Law was held by that Court to be *reasonable* and valid.

As however the previous decision was productive of much inconvenience to many Local Authorities, the Legislature made specific provision for the case in the 37 & 38 Vict. cap. 89, sect. 41, which has been since re-enacted in the 38 & 39 Vict. cap. 55, sect. 158, and renders the By Law unnecessary.

The same Statute, 21 & 22 Vict. cap. 98, sect. 34, enabled a Local Board to make By Laws with respect to the drainage of buildings, to water-closets, privies, ashpits, and cesspools, in connection with buildings. A By Law was made by such a Board that "no dwelling-house shall be erected without having at the rear or side thereof a good and sufficient back street or roadway, at least twelve feet wide, communicating with some adjoining public street or highway, for the purpose of affording access to the privy or ashpit of that house."

The Court of Queen's Bench held that this By Law was invalid as being *unreasonable*. They said that it might in some cases altogether prevent a person from building on his land, because no house

could be built unless a back street were provided, although it might be intended to have a water-closet for the house.

One of the Judges stated that if the By Law had provided that no privy should be constructed without there being an access to it by a back street or roadway it might have been good.—*Waite v. Garston Local Board of Health*, 37 L. J. (M. C.) 99; L. R. 3 (Q. B.), 5.

Again, a Local Board made a By Law prescribing a certain thickness for the walls of new buildings under a penalty. They further enacted that in case any offence under the By Law should continue, the offender should be liable to a further penalty of a sum not exceeding 40s. for every day during which such offence should continue. The Court of Common Pleas held that if this latter By Law extended to the case of a wall built contrary to the first By Law, it was invalid as being *unreasonable*, seeing that it would render the builder liable to a series of penalties during the whole of his life, whereas the Statute 21 & 22 Vict. cap. 98, sect. 34, enabled the Local Board to remove the wall themselves.—*Marshall v. Smith*, 28 L. T. 538; L. R. 8 C. P. 416.

In this case, also, the Legislature have deemed it right to intervene and to provide for the continuance of the wrongful act during a limited period by the 37 & 38 Vict. cap. 89, sect. 43, which has been re-enacted in the 38 & 39 Vict. cap. 55, sect. 158, in the following terms:

“Where an Urban Authority may under that Section pull down or remove any work begun or executed in contravention of any By Law, or where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of such By Law to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the By Law

shall be deemed to be a continuing offence, but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the By Law was broken."

Under the special Act of a Tramway Company it was provided that the tolls should be paid to such persons and at such places upon or near to the tramways, and in such manner and under such regulations as the Company should by notice appoint. The Company acting under the power set forth in chap. ii. p. 21, above, in respect of regulations for travelling on tramways, made a By Law that "every passenger shall *upon demand* pay the fare legally demandable for the journey." It was contended that it was not reasonable that the passenger should be called upon to pay before the journey was concluded. But the Court of Common Pleas held that, taken in connection with the power conferred by the Local Act, it was *reasonable* and valid.—*Egginton v. Pearl*, 33 L. T. 429.

By Laws are made by most bodies to regulate the mode of conducting their business, and the action of their members in the discharge of their functions. These are generally framed according to precedents which long usage has established in this country, but they are nevertheless settled, and adopted according to what is most convenient for the particular body. Here, however, the question of what is *reasonable* may arise.

Reasonable-
ness in By
Laws as to the
conduct of
Business.

Thus, a common provision is that no resolution passed by one meeting shall be rescinded at a subsequent meeting without notice.

In a recent case it appeared that a Local Board had made a By Law that no resolution of the Board be altered or rescinded unless one month's notice be given by the clerk to each member, setting forth the

proposed alteration, *nor unless there is at least as many members of the Board present at the meeting as were present at the meeting when such resolution was adopted.*

The Court of Queen's Bench, though holding that the first part of the By Law was a very salutary and competent By Law, intimated an opinion that the latter part might be invalid.—*Mayer v. Burslem Local Board*, 39 J. P. 437.

Reasonable-
ness in By
Laws made un-
der Customs.

Lastly, I have to notice that questions have been raised as to the *reasonableness* of By Laws made under the authority of *custom*.

Such as have been reported relate to By Laws made by the homage of a manor with reference to the enjoyment of common rights.

The result of the decisions is that a By Law made to regulate the exercise of the right would be valid, but if the By Law would tend to destroy the right or to render it unavailing it would be *unreasonable* and void.

In *Lord Cromwell's Case*, Dyer, 322, a By Law was made by the homage of a manor that no commoner should put and depasture his cattle on the common before the farmer of the rectory should ring a bell in the church belfry. This By Law was made by virtue of a custom, which also authorised the imposing of a penalty to be levied by distress, and it was held to be valid. This Case is cited, 1 Roll. Abr. 366.

Again, a By Law that no Commoner should keep his sheep on the common below a certain mark or bound under a penalty of 3s. 4d. to be forfeited to the lord, was held to be valid. It was urged that this deprived the commoner of his right to his common, but the Court held that this was not a total deprivation of his right, but only a regulation as to his

mode of exercising it.—*James v. Tintney*, or *Tintney v. James*, March 23, Cro. Car. 497; 1 Roll. Abr. 365.

On the other hand, it has been decided in *Latton v. Edbury*, Anderson 234, S. C. 1 Leon. 190, that a By Law that no commoner should keep on the commons of the manor any steer above the age of one year, under a penalty of 6*d.* for each offence, was invalid as being *unreasonable*, since it tended to destroy the commoner's right of common.

Another case involving a similar question is reported by the names of *Franklin v. Chauntrell* in Dyer, 322; *Franklin v. Cromwell*, Dalison 95; *Lord Cromwell's Case*, 3 Leon. 38; but no decision of the Court is reported.

I now advert to the Seventh rule, namely, that the law should be *positive* in its terms, and directed to prohibit or enjoin definitively the performance of an Act by the persons upon whom it is to operate. 7. Must be positive.

I have frequently seen By Laws which set out the proposition in loose and vague terms, so as to express rather a moral duty or a matter of expediency or convenience, than a direct command or prohibition.

Thus it is enacted that—"No carriage should hold more than four passengers." "No bathing machine should be unprovided with proper cloths." "The slaughter-house should be kept free from filth."

In these expressions the law is not expressed in decisive language; it only expresses a desire or an opinion that the matter referred to should be required or prohibited.

Again, the proposition is often expressed in a general statement like an apophthegm. Thus—"The house shall be built with a space at the back

for ventilation." "The sailing-boat shall have proper tackle." "No timber shall be placed in the outer wall." "A party-wall shall be nine inches thick."

The default here is that no obligation is cast upon any one to obey the By Law. Whereas that obligation would appear at once if the law had been directed to some particular person, as: "The builder of a house shall cause it to be built with a space at the back for ventilation." "The owner of a sailing boat shall cause it to be supplied with proper tackle." "The builder of a house shall not place any timber in the outer wall." "He shall build the party-wall with a thickness of nine inches."

I may observe, however, that this last default is avoided (and sometimes advantage is derived from the practice), if the law be framed with a general direction that the person to be bound shall obey the following directions, and if those directions are then set out in the abstract but positive manner above referred to in the second class of cases.

They will be governed by the introductory command, if due care be taken to connect them in appropriate language with it.

8. Must not
be *ultra vires*.

Reference to
the Charter.

The Eighth and last property which I have to notice as requisite in every By Law is of a negative character.

The law must not be made in respect of any matter not within the authority of the body enacting it, nor so as to operate upon persons not subject to it. Where the power is conferred by a Charter granted for any particular purpose, the By Law must not go beyond the scope of the Charter. In technical language, the By Law must not be *ultra vires*.

The body which makes By Laws acts under

powers conferred upon it either expressly or impliedly. Hence any act which exceeds that authority is void, and By Laws for which no authority is found to support them are invalid.

The power of legislating is very fascinating, and the law-maker is strongly urged to lay down rules, imposing restrictions or prescribing courses of action which the exigencies of the circumstances contemplated seem to him to require. But this propensity must be controlled by a careful attention to the powers actually conferred upon the body proposing to make the By Law.

The Courts of Law have always been very cautious in recognising By Laws, which emanate from authorities claiming to act in the place of the general Legislature of the land. Hence it has been necessary for the authority to establish clearly that their act is within their powers. If there be failure in this respect the Court will refuse to admit the By Law as a valid act, however reasonable or politic it may seem to be.

I refer to the remarks which I made upon this part of my subject in chap. ii. p. 66, and to the cases there cited.

In many cases in which By Laws have been rejected as *unreasonable*, the objection might have been taken of their being beyond the authority of the law-makers.

In the illustrations of this property it will be seen that the objection has been sometimes that the By Law was made in respect of a subject not delegated to the body; at other times it has been shown that though the subject was within the scope of the authority, the By Law has prescribed a mode of dealing with it which was not authorised.

In what respects the objection made.

The following recent cases will illustrate these propositions.

The 21 & 22 Vict. cap. 98, sect. 34, enabled the Local Board to make By Laws for several matters; among other things, "with respect to the closing of buildings and parts of buildings unfit for human habitations, and to prohibition of their use for such habitation." There was a general proviso "that no such By Law shall affect any building erected before the date of the constitution of the district." It was held that this proviso applied to this prohibition, and that, therefore, the Local Board could not make a By Law on this subject to affect a building erected before the constitution of their district.—*Burgess v. Peacocke*, 16 Scott (N. S.), 624.

In a subsequent case a Local Board made a By Law under the above Section, that "if any owner or person should construct or cause to be constructed any works, or do any act, or omit to do any act or to comply with requirements of the Local Board, or should make any alterations in any works after they have been completed, *whether in new or existing buildings*, contrary to the provisions therein contained, the Local Board might cause such works to be removed, altered, or pulled down." It was held that this By Law was invalid. The Local Board had power with respect to the level, width, and construction of new streets, but had no authority to provide for the destruction of any new works which they might not approve of.—*Brown v. The Local Board of Holyhead*, 1 H. & C. 601; 7 L. T. 332; 32 L. J. Ex. 25.

The same Section also provided "that the Local Board might make By Laws with respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings;" and this preceded the general proviso as to old buildings.

A Local Board made a By Law in reference to every building to be erected and used as a dwelling,

requiring a certain space to be left exclusively open ; and then provided in another By Law, that " wherever any space has been left belonging to any building, such space shall never afterwards be built upon without the consent of the Board."

It was held by the Court of Queen's Bench that either this By Law must be construed as applying to *new* buildings, or it must be held to be invalid, as the Local Board could not lawfully make such a By Law with reference to buildings built before the constitution of the district.—*Tucker v. Rees*, 7 Jur. (N. S.) 629.

In these cases the validity of the By Laws was questioned on the ground of the Local Board having attempted to deal with subjects, namely *old buildings* which were not under their control. It will be well to quote the remarks of Pollock, C.B., in the above-cited case of *Brown v. The Holyhead Local Board*, according to the report in 7 L. T. 334. He said, " Most unquestionably they have no power to do what they have done. It is broad tyranny. Persons empowered to make By Laws have no right to invest themselves with powers which the law will not sanction. The way in which Local Boards are inclined to use their powers makes it very desirable that they shall have as little power as possible."

It is, however, to be remarked, in answer to this observation of the learned Judge, that the Local Boards have generally adopted the language of the By Laws framed and submitted to them as model forms, rather than frame them themselves for their own rules. This consideration will not, however, give validity to what in fact has been prescribed without due legal authority.

As regards the excess of authority in respect of the regulations prescribed, where the general subject is within the powers of the body making the By In respect of regulations.

Law, I refer to the case of the *Q. v. the Governors of Darlington School*, 6 A. & E. (N. S.), 682.

A Grammar School was founded by a Charter of Queen Elizabeth, and was placed under the management of a certain Corporate body, with power to appoint a Master, and to remove him, according to their sound discretion. The Charter also empowered the Corporate body to make statutes, decrees, and orders touching the management, order, government, and direction of the Master and his salary, and all other matters whatsoever to the said school. A By Law was made which, among other provisions, enacted that no Master should be removed unless sufficient cause of complaint should be exhibited in writing against the Master, signed by the Corporate body, and be allowed by them as a sufficient cause for his removal.

It was held by the Court of Queen's Bench, and the Court of Exchequer Chamber, that this was a bad By Law, because it restricted and limited the absolute discretionary power conferred upon the body by the Charter. Tindal, C.J., in giving judgment, said, "Nothing can be better established than that a By Law by a Corporation, which alters the constitution of the Corporation, is void; and upon the same principle, a By Law which restrains and limits the powers originally given to the Governors by the founder himself, we think must be bad."

On the other hand, it is necessary to refer to another case, where a different decision was given. The 21 & 22 Vict. cap. 98, sect. 34, above referred to, enables a Local Board to make By Laws with respect to the level, width, and construction of new streets, and the provisions for the sewerage thereof; and as to the giving of notices and the deposit of plans and sections by persons intending to lay out streets or to construct buildings. A By Law was made by a Local Board, requiring every person

intending to erect a new building to give a fortnight's notice of his intention, and to leave plans of his intended building at the office of the surveyor, with various particulars; and at the same time required a plan to be left showing the position of the buildings, of the properties immediately adjoining, the width and level of the street, and the level of the lowest floor of the intended buildings, and of the yard belonging thereto. *Vice-Chancellor Stuart* held that this By Law was supported by the Statute.—*Slee v. The Corporation of Bradford*, 9 Jur. (N. S.) 815; 8 L. J. (N. S.) 491.

A Local Board made a By Law, under the same Section, that every building to be erected and used as a dwelling-house should have in the rear, or at the side thereof, or partly in the rear or partly at the side, an open space exclusively belonging thereto, to the extent of at least 500 square feet in the whole, free from any erection thereon above the level of the ground.

It was held that this By Law was valid, and not open to objection as fixing an arbitrary amount of free space.

The builder of three houses, according to his plans, left a space of this extent, but afterwards built certain wooden fences at the rear, which had the effect of diminishing the space. The Justices, having found that this was an erection within the prohibition of the By Law, the Court of Queen's Bench held that they could not overrule their decision on this point.—*Adams, App., Bromley Local Board*, Resp., 37 J. P. 662.

A Local Act in a Town prohibited the sale of articles—among others, of meat—so as to project over or on any streets, under a penalty. There was an exception in regard to stalls placed on places appointed by the Commissioners; and another as to stalls placed on places theretofore used for

that purpose at the times of the usual fairs and markets.

A Local Board of Health was constituted in the Town, which, by certain By Laws, appointed special places for the markets, in respect of certain descriptions of articles—among others, of meat—and prohibited the sale elsewhere.

It was held that such By Laws were valid; the Court overruled the exemptions claimed under the local Act, and decided that a Butcher who sold in a part of the Town other than that appointed for the sale of Butchers' meat was lawfully convicted for a breach of the By Laws.—*Savage*, App., *Booth*, Resp., 15 C. B. (N. S.) 264.

By excess in
the Penalty.

The Local Authority may also exceed their powers in the kind of penalty which they propose for the breach of the By Law. This default was shown in a very early case.

In the City of London it was proposed to prevent the child of an alien being bound apprentice to a freeman, and a By Law was made which declared the covenants in such an Indenture to be void. But the Court of Queen's Bench held that this By Law was void; that the Corporation might have imposed a fine or punishment on the master who took such an apprentice, but had no power to make the Indenture void.—*Doggerell v. Pokes*, Mo. 411; Owen, 69.

Hereafter will be shown what are the proper penalties for breaches of By Laws.

With refer-
ence to the
persons to be
affected.

I have now to consider how far the By Law is valid with reference to *the persons* upon whom it is made to operate. The subject has been adverted to above (in chap. ii.) under the title of "the Authority," but it requires some farther elucidation

here, because a By Law may be void as made *ultra vires*, if it apply to persons who cannot be rendered subject to it.

When the subject of the By Law is one which affects the general benefit of the locality, a By Law to enforce a regulation in regard to it is valid, though it apply to persons not members of the body who enacted it, but who bring themselves within the range of its operation.

Thus, when great care was bestowed by the Legislature on the Woollen manufacturers of this country, it was decided that the Corporation of London could make a By Law that all broadcloth put to sale in the City of London, whether by citizen or stranger, should be brought to a certain Hall within the City to be viewed and searched, and a sum of money to be paid for hallage; upon default, a fine of 6s. 8d. was to be paid. It was considered that this was for the public good, that is, in furtherance of the general law. 5 Co. 63.

So a By Law to regulate the plying of Watermen on the River Thames, made by a Corporation, was held by Lord Coke to be binding upon *Strangers*, as this was made for the public good.—*Corporation of Gravesend v. Edmunds*, 2 Brownl. 182.

A By Law to prohibit the slaughtering of cattle within a city was held to bind every *inhabitant* therein, whether free of the city, and, therefore, a member of the Corporation—or not. It was a regulation for the good government of the city and the prevention of nuisances.—*Pierce v. Bartram*, Cowp. 269.

In *Franklin v. Green*, 1 Buls. 12, the Court of King's Bench held that where a By Law is made by a guild to prevent fraud or general inconvenience, such as the corruption of meat sold, it would be binding upon a *stranger*; but not where it is made to support a mere trade rule. Thus a By Law which required butchers to dress one kind of slaughtered

animal in the same manner as another was held to have no operation on a butcher who was a stranger to the guild, as it only regulated the carrying on of the trade.

Not to bind
beyond the
area of the
jurisdiction.

It will doubtless be admitted that the body which makes a By Law cannot render it obligatory beyond the extent of that body's own jurisdiction. Yet it is necessary to refer to a case often quoted, though very little can be made out of the reports.

In the case of *The Trinity House Corporation v. Crispin*, Sir T. Jones, 144, a By Law that every master of a vessel should put on shore all his gunpowder within 24 hours after he anchored in the Thames, was considered by the Court of Queen's Bench to be in itself a good By Law, but a question was raised as to whether the Corporation could make it to operate beyond their jurisdiction, and the Court postponed their judgment.

The same case is reported in 2 Show. 96, but the By Law is stated in much more extended terms, namely, that *no ship in any port of England* should be laden with gunpowder above 24 hours before it puts to sea, nor should any be kept there above 24 hours after it lies at anchor.

Here Saunders, for the defendant, stated the proposition that all By Laws do bind either *ratione loci* or *ratione personæ*, but this extended to all mariners in England, and had the effect of an Act of Parliament.

No judgment is given, but it seems from the report that the Judges were disposed to consider that this was too much for any Corporation or Company to ordain.

Having thus discussed the various properties of

By Laws, and shown how far they are valid, and how far they are void, it is necessary that I should advert to one important point which arises where there are a series of laws, or where a By Law consists of several parts. By Laws
good in part
and bad in
part.

The rule to be gathered from the authorities appears to be this, that where there are several distinct By Laws, one may be void and the other good. Again, where they are combined, yet the parts are separable, the same rule would apply to the separate parts. But where they are so framed as to be inseparable, or that they are dependent upon each other, if part be void the whole is void.

The Chief Justice Pratt in *Fazakerley v. Wiltshire*, 1 Stra. 469, says, "There is no doubt but a By Law may be good in part and void for the rest, for where it consists of several particulars it is to all purposes as several By Laws, though the provisions are all thrown together under the form of one."

Chief Justice Willes, in *The Gunmakers' Company v. Fell*, Willes, 390, says, "A By Law may certainly be good in part and bad in part."

In *Reg. v. Lundie*, 5 L. T. (N. S.) 831; 8 Jur. (N. S.) 640; 31 L. J. (M. C.) 137, the pasture masters under a Local Act for regulating certain common pastures, being empowered to make By Laws for the management of the pastures, made a By Law that, if any pasture freeman entitled to stock the common pastures shall stock and depasture any entire or vicious horse on any part of the said common pasture, the person or persons so offending, and the *owner* or owners of the said stock, shall *respectively* forfeit for every such offence a penalty of £5. It was held that this By Law was *unreasonable*, so far as it applied to the *owner* of the stock, but that it was divisible, and the part which imposed a penalty upon the person offending was good.

And in the *The Q. v. Saddlers' Company*, 32 L. J. (Q. B.) 345, Willes, J., says, "It is now clear that By Laws are divisible," and he refers to *Reg. v. Lundie*.

Thus also, where the Poor Law Board made an order upon a Board of Guardians containing a series of separate articles, and the Court of Queen's Bench intimating a doubt as to the validity of one of them, the Board rescinded it; the Court afterwards held that as there was no objection to the rest of the order they could not quash it, as the defective part was separable from the rest.—*The Q. v. Robinson*, 17 Q. B. 466.

But on the other hand, in *The K. v. The Company of Fishermen of Faversham*, 8 T. R. 357, Lord Kenyon said, "Though a By Law may be good in part and bad in part, yet it can be so only where the two parts are entire and distinct from each other."

The same remark was made by Bayley, J., in *Clark v. Denton*, 1 B. & Ad. 97; and the rule is admitted in the case of *Blackpool Local Board of Health v. Bennett*, 4 H. & N. 138.

In *K. v. Bumstead*, 2 B. & Ad. 705, Taunton, J., says, "I allow that if a By Law consist of two parts, each part being in itself entire and capable of being separated from the other, the circumstance of one entire and separate part of that By Law being bad will not vitiate the other. But here the parts are all blended together and consolidated in one mass and cannot be separated, so that if the By Law be bad in part it must of necessity be bad altogether."

In *The Stationers' Company v. Salisbury*, Comb. 222, Lord Holt said, "Where a parcel of By Laws come before us all together, some good and some bad, they may be severed, but not so where the sense is entire." The By Law in this case and its default is shown at p. 94, *ante*. It seems to have been urged that as the default existed in the passage which

referred the approval of the excuse to the assistants, this default might be obviated by rejecting this part of the By Law; but the Court refused to entertain this proposal, holding the By Law to be entire.

In the recent case of *Elwood v. Bullock*, 6 A. & E. 383, the Court ruled that the whole By Law must be taken together, and that it could not stand if part were bad.

I must also notice that the By Law may be vitiated by an excessive penalty, and this was decided where it seemed that the penalty was divisible. Excess in
the Penalty.

Thus a By Law to be enforced by a distress and sale of the offender's goods was held to be wholly void (although the penalty might perhaps have been enforced by the distress), because the sale was beyond the powers of the authority making the By Law. —*Clarke v. Tucker*, 2 Ventr. 183.

This ruling was confirmed by the Court of King's Bench in *Lee v. Wallis*, 1 Ld. Keny. C. 292.

And in Com. Dig. By Law C. (7) it is laid down that it would be bad if the penalty was to be levied by imprisonment, sale, &c.

CHAPTER V.

OF THE CONFIRMATION OF BY LAWS.

Confirmation
required by the
Legislature.

THE Legislature has not allowed the authorities empowered to make By Laws to act altogether without control. The Courts of Law can, as already shown, examine the enactments, so as to see that they are reasonable, and within the scope of the powers given; but it is rendered necessary in most cases that the By Law should be confirmed by some superior authority, so as to prevent the violation of good policy, and to prevent oppression or general inconvenience.

Confirmation
of By Laws by
Guilds or Com-
panies.

This was provided for in very early times. A Statute was passed, 15 Hen. 6, cap. 6, respecting the confirmation of By Laws, which was allowed to expire.

19 Hen. 7, c. 7.

It was, however, renewed by the 19 Hen. 7, cap. 7, which, after reciting the previous Statute, and the mischiefs which had resulted from its having expired, enacted "that no Masters, Wardens, and Fellowships, of crafts or mysteries, or any of them, nor any rulers of guilds or fraternities, take upon themselves to make any act or ordinances, nor to execute any acts or ordinances by them heretofore made, in disinheritance or diminution of the prerogative of the King, nor of other, nor against the common profit of the people, but that the same acts or ordinances be examined and approved by the Chancellor, Treasurer of England, or Chief Justices of either benches, or three of them, or before both

the Justices of Assize in their circuit or progress in that shire where such acts or ordinances be made, upon pain or forfeiture of 40 *lib.* for every time that they do the contrary."

This Statute has not been repealed, though it is not now in much use. So recently as the case of *The Tobacco Pipe Makers' Company v. Loder*, 16 Q. B. 765, reference is made to an allowance of a By Law made by a Trading Company in London, which was allowed by Lord Eldon as Chancellor, Lord Ch. J. Abbott, and Lord C. J. Dallas. How far acted upon.

It is doubtful how far these judicial authorities exercised any control over the By Laws presented to them for their confirmation. Force of the Confirmation.

In *The Stationers' Company v. Salisbury*, Comb. 222, where a By Law was said to have been confirmed by the Lord Chancellor, the Court said, "'Tis never the better for that, for that is done of course. So we used to do in the circuits; but if the orders be not good, let the parties look to that at their peril."

But Lord Kenyon, in the case of *K. v. The Coopers' Company of Newcastle-upon-Tyne*, 7 T. R. 548, stated that they were often brought to him as Chief Justice for confirmation, and that he had refused to allow some as illegal, showing that he, at least, had examined the By Laws, and exercised a judgment upon them.

It was, indeed, held in early times that the approval of a By Law by the authorities under this Statute did not give validity to the By Law, if not otherwise legal. It only saved the makers from the penalty imposed by that Statute.—*The Ipswich Tailors' Case*, 11 Co. 54.

In *The Mayor of Bedford v. Fox*, 1 Lutw. 563, a By Law made by a Corporation was set out, and there was an allegation that it had been allowed by

the Justices of Assize, yet the Court of Common Bench held that it was illegal and void.

And in the case of *Kirk v. Nowill*, 1 T. R. 121, a By Law which had been approved by Lord Loughborough and Baron Hotham at the Assizes in accordance with this Statute was, nevertheless, afterwards held to be illegal by the Court of Queen's Bench.

On the other hand, it was held by the Court of Queen's Bench in *Q. v. The Saddlers' Company*, 3 E. & E. 42, and this judgment was upheld by the Court of Exchequer Chamber, upon error, that a By Law is not rendered invalid by reason of its not having been approved according to this Statute, though the persons making it, who do not procure its approval, may be liable to a penalty. This was also laid down in 1 Roll. Abr. 363, where 5 Co. 63 b. is cited.

Confirmation
of By Laws
made by
Municipal
Corporations.

It had been declared that this Statute did not apply to Municipal Corporations. See Com. Dig. By Law (C. 1). And I cannot find that the By Laws of such Corporations were submitted for confirmation. But the 5 & 6 Will. 4, cap. 76, sect. 90, having enabled the Town Council of a Borough to make By Laws, provides that no such By Law shall be of any force until the expiration of forty days after the same, or a copy thereof, shall have been sent, sealed with the seal of the said Borough, to one of his Majesty's principal Secretaries of State, and shall have been affixed on the outer door of the Town Hall, or in some other public place within the said Borough; and if at any time within the said period of forty days his Majesty, with the consent of his Privy Council, shall *disallow* the same By Law, or any part thereof, such By Law, or the part thereof disallowed, shall not come into operation.

“Provided that it shall be lawful for his Majesty, if he shall think fit, at any time within the said period of forty days, to enlarge the time within which such By Law, if disallowed, shall *not* come into operation; and no such By Law shall in that case come into force until *after* the expiration of such enlarged time.”

Hence such By Laws as are made by the Town Councils of Municipal Boroughs in matters not dealt with in Sanitary Statutes are now referred to the Secretary of State for the Home Department.

Some doubt was entertained as to the operation of the Local Government Act, 1858, in reference to By Laws for the prevention of nuisances in Boroughs in cases where that Act had been adopted, and where it was put in force in such Boroughs by the 35 & 36 Vict. cap. 79. It was considered that there was probably a conflict of the powers of confirmation; but this doubt was removed by the 37 & 38 Vict. cap. 89, sect. 46, which enacted that By Laws made under 5 & 6 Will. 4, cap. 76. sect. 90, for the prevention and suppression of such nuisances as are the subject of By Laws under 21 & 22 Vict. cap. 98, sect. 32, should be confirmed by the Local Government Board. This enactment, slightly altered, is reproduced in the 38 & 39 Vict. cap. 55, sect. 187, in these words:—“By Laws made by the Council of any Borough under the provisions of sect. 90, of the 6th year of K. Will. 4, cap. 76, for the prevention and suppression of *certain nuisances*, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that Section mentioned; but all the provisions of this Act relating to By Laws shall apply to the By Laws so made as if they were made by this Act.”

The *certain nuisances* must, it is believed, be referred to those mentioned in the previous Statute.

Hence By Laws so made by the Town Council of a Municipal Corporation for such purposes must be referred to the Local Government Board for confirmation.

Confirmation
required by re-
cent Statutes.

In all recent cases where the Legislature have given power by Statute to Authorities to make By Laws in reference to the matters entrusted to them, provision has been made for subjecting the By Laws to supervision.

They are required to be confirmed, approved, or allowed, by some superior Authority.

Workhouse
Regulations.

Thus all rules, orders, and regulations, made under 22 Geo. 3, cap. 83, or any local or other Act relating to Poor-houses, Workhouses, or the relief of the poor, were required by the 4 & 5 Will. 4, cap. 76, sect. 22, to be submitted to the Poor Law Commissioners, to be approved and confirmed by them, and when so confirmed they were made legally valid and binding upon all persons.

This was a general enactment as to a matter of universal application.

I proceed to state the various Statutes which require By Laws made by different Authorities to be referred to some superior head or body for confirmation. They are as follows:—

As to Rail-
way By Laws.

First, with reference to *Railways*, the following provision is made in 3 & 4 Vict. cap. 97, sect. 7, which, noting "that many Railway Companies are or may hereafter be empowered by Act of Parliament to make By Laws, Orders, Rules, or Regulations, and to impose Penalties for the enforcement thereof, upon persons, other than the Servants of the said Companies, and it is expedient that such

powers should be under proper control," made provision that copies of all By Laws previously made by such Companies duly certified in a manner to be prescribed by the Board of Trade, should, within two months, be laid before the said Board, and in default thereof should cease to have any force or validity.

Then in Section 8 it is enacted, "That no such By Law, Order, Rule, or Regulation made under any such power, and which shall not be in force at the time of the passing of this Act, and no Order, Rule, or Regulation annulling any such existing By Law, Rule, Order, or Regulation which shall be made after the passing of this Act, shall have any force or effect until *Two* Calendar Months after a true copy of such By Law, Order, Rule, or Regulation, certified as aforesaid" (i.e., in the manner directed by the Board of Trade), "shall have been laid before the said Board, unless the said Board shall, before such period, signify their approbation thereof."

By Section 9 it is enacted, "That it shall be lawful for the Board, at any time, either before or after any By Law, Order, Rule, or Regulation which shall have been laid before them as aforesaid shall have come into operation, to notify to the Company who shall have made the same, their *disallowance* thereof, and, in case the same shall be in force at the time of such disallowance, the time at which the same shall *cease* to be in force: and no By Law, Order, Rule, or Regulation which shall be so disallowed shall have any force or effect whatsoever; or, if it shall be in force at the time of such disallowance, it shall cease to have any force or effect at the time limited in the notice of such disallowance; saving in so far as any Penalty may have been then already incurred under the same."

Section 9 repealed the power of any Court or other persons to give validity to such By Laws.

The Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. cap. 20), authorises the making of By Laws by Railway Companies, and refers to the provisions of the 3 & 4 Vict. cap. 97, but contains no specific provision for confirming them.

The 26 & 27 Vict. cap. 92, sect. 32, in reference to By Laws made by Railway Companies, respecting their *Steam-vessels*, requires "such By Laws to be sanctioned and authenticated in the same manner as is required by any special or other Act with respect to By Laws relating to the Company's railway."

The By Laws made by Railway and Canal Companies under the *Explosives Act*, 1875 (38 & 39 Vict. cap. 17), are to be sanctioned and confirmed by the Board of Trade.

As to Tram-
way By Laws.

The *Tramways Act*, 1870 (33 & 34 Vict. cap. 78), having enabled By Laws to be made, enacts, in Section 46, "that no such By Law shall have any force or effect which shall be *disallowed* by the Board of Trade within Two Calendar Months after a true Copy of such By Law shall have been laid before the Board."

This applies to those By Laws which relate to the management of the Tramway.

But the By Laws which relate to the *carriages, drivers, and conductors* are to be enforced as in the case of *Hackney Carriages* and the *drivers* thereof. Hence the By Laws applicable thereto must be confirmed by the Local Government Board.

Baths and
Washhouses.

By the 9 & 10 Vict. cap. 74, sect. 34, no By Law made under that Act for the provision of *Public Baths and Washhouses* "shall be of any legal force until the same shall have received the approval of one of Her Majesty's principal Secretaries of

State." It will be seen hereafter that the Local Government Board are now substituted for him.

Then the 10 & 11 Vict. cap. 14 (*The Markets and Fairs Act*), in Section 44, provides that Markets and Fairs.

"No By Laws made under the authority of this, or the *Special Act* (except such as may relate solely to the Officers or Servants of the Undertakers), shall come into operation until the same shall be allowed in the manner prescribed by the Special Act, or if no manner be prescribed, until the same shall be allowed by the Justices at Quarter Sessions, and in either case approved under the hand of one of *Her Majesty's principal Secretaries of State*.

"And it shall be incumbent on the Justices at Quarter Sessions, on the request of the Undertakers, to examine into the By Laws which may be tendered to them for that purpose, and to allow of or disallow the same, as to them may seem meet."

In the case of Markets provided by Urban Sanitary Authorities, as will be seen hereafter, the allowance by the Local Government Board is substituted for that of the Secretary of State and the Quarter Sessions.

The Harbours, Docks, and Piers Clauses Act, 1847 Harbours.
(10 & 11 Vict. cap. 27), in Section 85, requires that "all By Laws made under it or the *Special Act* except such as relate solely to the Undertakers or their Officers and Servants) shall be confirmed in the prescribed manner" (i.e., prescribed by the Special Act). "If no means of confirmation be prescribed, then they shall not come into operation until they be allowed by a Judge of one of the superior Courts, or, in England, by the Justices at the Quarter Sessions."

The Statute renders it incumbent upon the Sessions to examine these By Laws as above

Towns Im-
provement and
Police.

The Towns Improvement Clauses Act, 1847 (10 & 11 Vict. cap. 34, sect. 202), has a provision as to confirmation, which is the same as in 10 & 11 Vict. cap. 27, sec. 85, just noticed.

And *The Towns' Police Clauses Act, 1847* (10 & 11 Vict. cap. 89, sect. 71), incorporates all the provisions of 10 & 11 Vict. cap. 34, which relate to By Laws. Hence a similar confirmation was required under this Act.

Emigrant
Ships.

The Passengers' Act Amendment Act, 18 & 19 Vict. cap. 119, sect. 82, which enables Dock Trustees to make By Laws respecting *Emigrants*, provides that no such Rule or By Law shall take effect until they have been approved by a Secretary of State.

Petroleum.

Under *The Petroleum Act, 1871* (34 & 35 Vict. cap. 105, sect. 4), By Laws made by the Harbour Authority are to be confirmed by the Board of Trade, with or without any omission, addition, or alteration, or such Board may disallow the same.

Sanitary.

The Public Health Act (11 & 12 Vict. cap. 63), in Section 115, enacted that no By Law made by a Local Board should be of any force or effect unless and until the same was submitted to and confirmed by one of Her Majesty's principal Secretaries of State, who was thereby empowered to allow or disallow the same as he might think proper. This clause also took effect upon the 21 & 22 Vict. cap. 98, and the other Statutes incorporated therewith, where there was no specific provision for the confirmation of the By Laws.

This last Statute incorporated the provisions of the 10 & 11 Vict. cap. 34, and 10 & 11 Vict. cap. 89, just referred to, in regard to the making of By Laws, and hence the By Laws made by Local Boards under

them, became confirmable by the Secretary of State instead of by the Judge or Justices.

Then the Statute, 34 & 35 Vict. cap. 70, transferred to the Local Government Board all the powers of the Secretary of State under the Statutes relating to the Public Health, Local Government, and Sanitary Matters, Baths and Washhouses, Public Improvements (23 & 24 Vict. cap. 30), and Towns' Improvement. Hence the confirmation which had been previously required to be given by the Secretary of State under those Statutes and the Statutes incorporated was thenceforth required from the Local Government Board.

There was an omission of the Regulations under the Common Lodging Act, 1851, which was supplemented by the 37 & 38 Vict. cap. 89, sec. 46.

The Act 35 & 36 Vict. cap. 79, either determined the powers of Commissioners under Local Acts for Sanitary purposes, or constituted them Urban Sanitary Authorities, subject to the provisions of the above general Acts. Hence their By Laws for such purposes would doubtless have become subject to the confirmation of the Local Government Board. But there is a general enactment in Section 34, "that where in any Local Acts the confirmation of a Secretary of State is required to the giving effect to any By Law for Sanitary purposes, the confirmation of the Local Government Board shall be required instead of that of the Secretary."

This Statute has, however, been repealed by the 38 & 39 Vict. cap. 55, and the following enactment is contained in Section 184: "By Laws made by a Local Authority under this Act, or for purposes the same as, or similar to those of this Act, under any Local Act, shall not take effect unless and until they have been submitted to and confirmed by the Local Government Board, which Board is hereby empowered to allow or disallow the same as it may think proper."

It must be noticed that the Harbours, Docks, and Piers Act above referred to is not brought under the control of the Secretary of State or the Local Government Board. Hence the confirmation of the By Laws under it remains with a Judge of the superior Courts or the Court of Quarter Sessions.

I do not know that there is any precise form established for the proceedings before confirmation in these tribunals. As regards the Quarter Sessions, the confirmation is moved for by Counsel.

Chemical
and Medical.

By Laws made by the *Pharmaceutical Society* must, under 15 & 16 Vict. cap. 56, sect. 2, be confirmed and approved by a Special General Meeting of the Members of that Society, and one of Her Majesty's principal Secretaries of State.

And those relative to *Medical Examinations* to be passed by the *University of London* under 36 & 37 Vict. cap. 55, must be assented to by a Secretary of State, who may subsequently revoke his assent.

While those made by the College of *Surgeons* for a like purpose, under 38 & 39 Vict. cap. 43, sect. 1, must be approved by the Privy Council, who may at any subsequent time revoke such assent.

Pilotage.

The By Laws made by *Pilotage Authorities* under the Mercantile Marine Act, 17 & 18 Vict. cap. 104, sects. 33 & 333, must be made with the consent of Her Majesty in Council.

It is, moreover, right to notice that Section 336 provides for By Laws made otherwise than under that Act, as follows:—

“If the greater part in number of the qualified Pilots belonging to any Port, or the Local Marine Board (where there is one), or, at any Port where there is no Local Marine Board, if any Masters, Owners, or Insurers of Ships, being not less than six in number, consider themselves aggrieved, by any

Regulations or *By Laws* in force when this Act comes into operation, or hereafter made under some authority other than the provisions of this Act, or by any defect or omission therein, they may appeal to the *Board of Trade*, and the said Board may thereupon *revoke* or *alter* any such Regulation or By Law, or may *make additions* thereto in such manner as, having regard to the interests of the persons concerned, may appear to be just and expedient; and every order so made shall be conclusive in the matter."

As to the proceedings of the Board of Trade upon these applications, see the remarks hereafter in reference to the Petroleum Act.

In regard to By Laws made under *The Literary and Scientific Institutions Act*, 17 & 18 Vict. cap. 112, sect. 24, provides—"No pecuniary penalty imposed by any By Law for the breach thereof shall be recoverable unless the By Law shall have been *confirmed* by the votes of *three-fifths* of the Members present at a Meeting specially convened for the purpose.

The By Laws made under *The Recreation Grounds Act*, 1859 (22 Vict. cap. 27), by the Managers and Directors, must be approved by the Charity Commissioners for England and Wales. Recreation Grounds.

By 27 & 28 Vict. cap. 118, sect. 31, no By Law made by the Conservators of the River Thames shall have any force unless and until it is allowed by order of Her Majesty in Council. River Thames.

The Statute 33 & 34 Vict. cap. 75, which provides for the promotion of *Elementary Education*, in Section 74 enables School Boards to make By Laws with the approval of the Education Department, and Elementary Education.

enacts that, "such By Laws shall not come into operation until they *have been sanctioned by Her Majesty in Council.*" It proceeds to enact that "It shall be lawful for Her Majesty, by Order in Council, to *sanction* the said By Laws, and thereupon the same shall have effect as if they were enacted in this Act."

Thus these By Laws must not only have the approval of the Education Department, but they must be also sanctioned by the Queen in Council.

Salmon
Fishery.

The Statute relating to the *Salmon Fishery*, 36 & 37 Vict. cap. 71, contains, in Section 41, the following provision as to the confirmation of By Laws :—

"No By Laws made by the Board of Conservators shall come into operation until the same be confirmed by one of Her Majesty's Secretaries of State, who may direct an inquiry into the same, at such time and place, and before such persons, and after giving such notices as he shall think fit; and with or without such inquiry, he may allow or disallow the said By Laws as he shall think fit :

"Provided that if at any time before the confirmation of any By Law for any purpose mentioned in Sub-sections 1, 2, 3, 4, or 8 of Sub-section 39, any owner or occupier of any Fishery, or any licensee who would be affected by such By Law, shall, by notice in writing to the Secretary of State, object thereto, and *shall give such security for the payment of any Costs attending the inquiry*, and the notice hereinafter mentioned, as the Secretary of State may require, the Secretary of State shall either disallow such By Law, or cause a Public inquiry to be held in some convenient place, by such person or persons as he may appoint, when all persons interested may have the opportunity of being heard :

"And after such inquiry, the Secretary of State

shall either disallow such By Law, or give one month's notice of his intention to allow the same, by advertisement in some newspaper or newspapers circulating in the district affected thereby."

In a recent Parliamentary Paper, 1875, No. 294, relating to the Wye River By Laws, will be found, an account of the requirements of the Home Office, as to the security for Costs, and of some of the proceedings in reference to the confirmation of the By Laws.

The 36 & 37 Vict. cap. 38, enables the *Railway Commissioners* appointed under that Act to make General Orders and Regulations to govern their proceedings, but in Section 29, requires them to be approved of by the Lord Chancellor. Railway Commissioners.

The 37 & 38 Vict. cap. 89, sect. 45, which enabled Sanitary Authorities to make By Laws in respect to *Hop-pickers*, required them to be confirmed by the Local Government Board. This is not mentioned in 38 & 39 Vict. cap. 55, sec. 312, because by Section 182, all By Laws made by a Local Authority under that Act must be confirmed by that Board. Hop-pickers.

The Explosive Substances Act, 38 & 39 Vict. cap. 17, in Sections 34 & 35, requires the By Laws framed under it by the Harbour Authorities and the Railway and Canal Companies to be sanctioned and confirmed by the Board of Trade, and those made by the occupier of a wharf, under Section 36, are to be confirmed by the Secretary of State. Explosive Substances.

The Special Rules made under the *Factory Acts* are, by 27 & 28 Vict. cap. 48, sect. 5, to have no validity until approved by a Secretary of State. Factory Acts.

The Special Rules made by the owner of an *Alkali Works* were, by 26 & 27 Vict. cap. 124, sect. 13, rendered subject to the sanction of the Alkali Works.

Board of Trade, for whom the Local Government Board has been substituted by the 35 & 36 Vict. cap. 79, sect. 35.

Mines.

More elaborate provisions have been made for the confirmation of Special Rules, under the *Mines Regulation Acts*, 35 & 36 Vict. cap. 76, sects. 53 & 54, and cap. 77, sects. 25 & 26.

The Rules are to be sent to the Inspector of the district for approval by the Secretary of State.

Copies of these Rules, with a notice that objections may be sent to the Inspector by any person employed in the Mine, shall be posted up in the manner prescribed for the publication of notices for *two weeks* before they are sent to the Inspector; and a certificate of such posting, signed by the person sending the same, shall be transmitted to the Inspector.

If the Secretary of State do not object within forty days after they are sent to the Inspector, they shall be final.

If the Secretary of State object, he can, within such forty days, send his objections and suggest modifications. If no objection be made in writing within *twenty days* to the proposed modifications, they shall become final as modified.

If the objection be sent in writing within the specified time, the matter shall be referred to arbitration, and the Rules shall be established as settled by the Arbitrator.

False Statements as to the posting up of the Rules and notices is made an offence under the Act in each case.—35 & 36 Vict. cap. 76, sect. 56, and cap. 77, sect. 25.

And the omission to transmit the Rules to the Secretary of State within the appointed time, in the case of Coal Mines, is also an offence under the Act.—35 & 36 Vict. cap. 76, sect. 56.

Some doubts have been expressed as to the operation of the provisions which require By Laws to be confirmed by the Secretary of State (now, as above shown, represented by the Local Government Board), and by some other authority.

Conjoint
Confirmation.

This was settled by the 37 & 38 Vict. cap. 89, sect. 46, which is re-enacted in the 38 & 39 Vict. cap. 55, sect. 184, in these words: "A By Law required to be confirmed by the Local Government Board shall not require confirmation, allowance, or approval by any other authority."

This enactment disposed of the question raised under the Fairs and Markets Acts as to the alleged necessary confirmation by the Quarter Sessions.

Various provisions have been made by different statutes for preliminary steps to be taken before the By Laws can be confirmed or allowed by the authority to which the confirmation or allowance is entrusted.

Preliminary
proceedings.

Thus the 10 and 11 Vict. cap. 27, *The Docks Harbours, and Piers Act* contains the following provision in Section 86:—"No such By Laws shall be confirmed unless notice of the intention to apply for a confirmation of the same have been given in one or more newspapers of the county in which the *Harbour, Dock, or Pier, or the principal office thereof, is situate*, one month at least before the hearing of such application; and any person desiring to object to any such By Law, on giving to the *Undertakers* notice of the nature of his objection *ten days* before the hearing of the application for the allowance thereof, may, by himself or his counsel, attorney, or agent, be heard thereon; but not so as to allow more than one objecting party to be heard on the same matter of objection.

Docks and
Harbours.

"Section 87. For one month at least *before* any such application for confirmation of any By Laws a copy of the proposed By Laws shall be kept at the principal office *of the Undertakers*; and all persons may, at all reasonable times, inspect such copy without fee or reward, and the *Undertakers* shall furnish every person who shall apply for the same with a copy thereof, or of any part thereof, on payment of *sixpence* for every one hundred words so to be copied."

Markets and Fairs. Similar provisions are contained in the 45 & 46 sects. of the 10 & 11 Vict. cap. 14, The Markets and Fairs Clauses Act, 1847; and in sects. 203, 204 of the 10 & 11 Vict. cap. 34, The Towns' Improvement Clauses Act; while the 71 sect. of 10 & 11 Vict. c. 89, The Towns' Police Clauses Act, incorporates the provisions of the 10 & 11 Vict. cap. 34, applicable to By Laws.

Towns Improvement and Police.

There is, of course, a separate description of the place wherein the notice is to be published, namely, *in the market-place or fair, or in the office of the Commissioners*, and the newspaper should be such as circulates in the county of the market, or within the limits of the special Act.

Sanitary. As regards By Laws made by Local Boards, and now by all Sanitary Authorities, the 11 & 12 Vict. cap. 63, sect. 115, contained provisions which are set forth in 38 & 39 Vict., cap. 55, sect. 184, in these terms, No such By Laws shall "be confirmed unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such By Laws relate one month at least before the making of such application" [i. e. the application to the Local Government Board].

"And unless for one month at least before any such application a copy of the proposed By Laws has been

kept at the office of the Local Authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such By Laws relate, without fee or reward."

It is also required that "the clerk of the Local Authority shall, on the application of any such ratepayer, furnish him with a copy of such proposed By Laws, or any part thereof, on payment of *sixpence* for every *one hundred* words contained in such copy."

Before the Local Government confirm any By Laws, they require to be supplied with prints of the newspapers containing the advertisements.

Care should be taken in framing them, so that it may appear that they are to be submitted to the Local Government Board, and not to any other authority.

It is not necessary to set out the By Laws in the advertisement, but their object and general purport should appear therein.

I have already in the Chapter as to the making of By Laws, p. 79, *ante*, set out the rules laid down by the Local Government Board in reference to the preliminary steps to be taken in the preparation of By Laws requiring their confirmation or approval.

The Mercantile Marine Act, 17 & 18 Vict. cap. 104, sect. 334, requires that every By Law proposed to be enacted by any *Pilotage Authority*, in pursuance of the foregoing powers, shall, before it is submitted to Her Majesty in Council for her assent, be *published* in such manner as may from time to time be prescribed by the Board of Trade.

Pilotage.

The Tramway Act, 33 & 34 Vict. cap. 78, sect. 46, requires that notice of the making of any By Law under the provisions of that Act shall be published by the Local Authority, or the promoters making the same, by advertisement, according to the regu-

Tramways.

lations contained in Part II. of the Schedule C. to the Act annexed; and unless such notice is published in manner aforesaid, such By Law shall be disallowed by the Board of Trade.

The provision in the Schedule is as follows:—
 “ Within one month after the making of any By Law, notice of the making of the same and a copy of such By Law shall be published by advertisement in manner following —

“(1.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by such By Law, or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

“(2.) The advertisement is also in every case to be inserted once at least in the ‘ London Gazette.’

“ And a copy of every such proposed By Law shall, not less than two calendar months before such By Law shall come into operation, be sent to the Board of Trade, and shall be delivered to the Promoters of the Tramway, if the same was made by the Local Authority, and to the Local Authority if the same was made by the Promoters.”

Elementary
Education.

33 & 34 Vict. cap. 75, *The Elementary Education Act*, provides in sect. 74 that “ the School Board, not less than one month before submitting any By Law for the approval of the Education Department, shall deposit a printed copy of the proposed By Laws at their office for inspection by any ratepayer, and supply a printed copy thereof *gratis* to any ratepayer, and shall publish a notice of such deposit.”

“ The Education Department before approving of any By Laws shall be satisfied that such deposit has

been made and notice published, and shall cause such inquiry to be made in the School District as they think requisite."

As regards the publication of this notice, it is to be observed that sect. 80 of the Act required the publication to be (1) by advertisement in some one or more of the newspapers circulating in the district. (2) By notice to be affixed during not less than twelve hours in the day on Sunday on or near the principal doors of every church and chapel to which notices are usually fixed, and at every other place in such district at which notices are usually affixed.

The 36 & 37 Vict. cap. 86, sect. 20, made some further provision enabling the Education Department to substitute some other mode of notice.

Accordingly, by an order dated Dec. 30, 1873, the Education Department directed that notices may be published—

1. "In a Borough—by advertisement in some one or more of the newspapers circulating in such borough, and also in like manner as in the case of election of Councillors.

2. "In a Parish—by similar advertisement in the newspapers, and also in like manner as public notices are usually published in the parish to which they relate."

That Statute also imposes a penalty on any one who wilfully tears down, injures, or defaces any notice affixed in pursuance of 33 & 34 Vict. cap. 75.

It is convenient here to notice that the Education Department, upon receiving the By Laws made by any School Board, examine them, and if not satisfied, return them with a letter stating that they have suggested certain alterations to be considered by all parties. They recommend that a copy of the By Laws as proposed to be amended should

Practice of
the Education
Department.

be sent to their Lordships with the previous copies before they are deposited, and the notices published.

If the By Laws are satisfactory when first forwarded, and if, when the amended By Laws are returned, and being again examined, they are found to be then satisfactory, their Lordships point out that the formalities required by sect. 74 as to the deposit and notice of the amended By Laws must be satisfied. They transmit a printed form of the notice of the making and deposit of the By Laws to be published by the Board, and of a declaration to be signed by the clerk, of the making deposit and publication of the By Laws, which declaration is to be returned to the Department.

They require the copy of the By Laws to be printed, and two additional copies signed and sealed to be sent to their office. When this is done they acknowledge the receipt and the approval of the Department, and promise immediate notification when the Queen's sanction has been obtained.

The Department forwards the copy of the By Laws to the Clerk of the Council, by whom the same is laid before the Queen for approval. When approved, this copy is published by the Clerk of the Council in the 'London Gazette,' and the copy being returned to the Education Department, is transmitted to the School Board, with a notification of the Queen's approval, and its publication in the 'Gazette.'

Petroleum.

By the Petroleum Act, 1871 (34 & 35 Vict. cap. 105), sect. 4, it is provided that the Harbour Authority, who make By Laws under that Act, when they have framed them "shall publish the same, with a notice of their intention to apply for the confirmation thereof."

No precise mode of publication is prescribed by the Act, but the Board of Trade require Harbour Authorities to prepare a draft of the proposed By Laws, and to publish them, once at least, in two consecutive weeks in 'The London Shipping and Mercantile Gazette,' and twice at least in some local newspaper, giving notice at the same time of their intention to apply to the Board of Trade for the confirmation of the By Laws. They require the notice to state the place where, and the person to whom, during one calendar month from the date of the notice, objections should be sent.

Practice of
the Board of
Trade.

At the expiration of that time a copy of the By Laws, together with any objections which may have been received, must be transmitted to the office of the Board of Trade for consideration.

It is advisable here, as in the case of the Sanitary By Laws, that the draft should be upon Folio Foolscap Paper, with a good margin for remarks or alterations.

The practice in regard to By Laws made by *Harbour* and *Pilotage* Authorities referred to above is precisely similar to that described in respect of By Laws under the Petroleum Act.

As regards the By Laws of the Conservators of the River Thames, it is required by the 27 & 28 Vict. cap. 113, sect. 31, that "when they propose to make any By Laws they shall *publish* the proposed By Laws."

Conservation
of the River
Thames.

"Before they submit any proposed By Laws for allowance of Her Majesty in Council they shall, during one month at least after the publication thereof, afford to all persons the opportunity of making in writing, or otherwise, objections to or representations respecting the proposed By Laws, and shall take all such objections and representations into consideration, and, if they think fit, may abstain from making, or may alter or add to the proposed By Laws.

“ If any alteration or addition be so made, the Conservators shall publish the proposed By Laws as so altered or added to before submitting the same for allowance.

“ They, on submitting any proposed By Laws for the allowance, shall publish notice that they have done so; and during one month after the completion of such publication of notice any person may by petition submit to Her Majesty in Council any objection to, or representation respecting, the proposed By Laws.”

Although these By Laws are to be submitted to Her Majesty in Council, yet as they are laid before the Board of Trade for advice, that Board require similar proceedings to be taken as above notified with respect to other By Laws requiring their sanction, with this in addition:—They require the Conservators to advertise the proposed By Laws in the ‘Times’ newspaper, as well as in the above-mentioned ‘Shipping Gazette,’ and in the local papers circulating in Oxfordshire, Bucks, and Berks.

Salmon
Fishery.

In regard to the Salmon Fishery, the 36 & 37 Vict. cap. 71, sect. 42, provides that “ for one month at least before any application for confirmation of any By Laws, notice of the intention of the said Board to apply for such confirmation shall be given once in each week by advertisement in one or more newspapers circulating in the district, and a copy of the proposed By Laws shall be kept at the office of the Board, or some place to be appointed by the Chairman for that purpose; and all persons may at all reasonable times inspect such copy without fee or reward; and the said Board shall furnish every person who shall apply for the same with a copy thereof, or any part thereof, on payment of *one penny*.”

The Explosive Act, 1875 (38 & 39 Vict. cap. 17), ^{Explosive matters.} sect. 38, enacts that "any By Laws which is or are proposed to be made under this Act by a Secretary of State or the Board of Trade shall, before being so made, be published in such manner as the Secretary of State or the Board of Trade, as the case may be, may direct as being in his or their opinion sufficient for giving information thereof to all Local Authorities, Corporations and persons interested."

"The By Laws framed by any Railway Company, Canal Company, or Harbour Authority under this Act shall, before being sanctioned by the Board of Trade, be published in such manner as may be directed by the Board of Trade, with a notice of the intention of such Company or authority to apply for the confirmation thereof, and may be sanctioned by the Board of Trade with or without any omission, addition, or alteration, or may be disallowed."

"The Secretary of State or the Board of Trade, as the case may be, shall receive and consider any objections or suggestions made by any Local Authority, Corporation, or persons interested with respect to By Laws published in pursuance of this section, and may, if it seem fit, amend such By Laws with a view of meeting such objections or suggestions without again publishing the same."

I have here to notice that, as the approval of the Judges under the Statute of Henry VII. did not ^{Confirmation does not legalise of itself.} render the By Laws approved by them valid, so the confirmation by the Secretary of State, given under any of the above statutes, will not render any By Law valid if it were not warranted by the Act under which it was framed.—See *Q. v. Mary Wood*, 5 E. & E. 49; *Elwood v. Bullock*, 6 A. & E. (N.S.) 399.

It is well, therefore, to observe that when the ^{Letter of the Local Government Board.} Local Government Board confirm any By Laws they

state in their letter which returns them "that they have given their strict attention to the revision of these By Laws, with the view of satisfying themselves that the series which they have confirmed contains no clause to which objection can be made on the ground that it is in excess of, or at variance with, the powers conferred by the Statutes. As far as the Board are enabled to form an opinion, the By Laws now approved are not open to any such objection; but, at the same time, they think it right to point out that their confirmation has not the effect of rendering the By Laws absolutely legal."

"The confirmed By Laws are returned herewith, together with the original and revised drafts, and the Board request that when the By Laws have been printed, two copies may be forwarded for deposit in their office."

But in the case, *The Tobacco Pipe Makers' Company v. Loder*, 16 Q. B. 765, it was admitted that if a person comes into a Company or Guild, he cannot object to the legality of a By Law which has been allowed by the Judges under the Statute of Henry VII.

Confirmation
not to be
withdrawn or
altered.

When By Laws have been confirmed or approved generally, such confirmation or approval cannot be withdrawn or revoked.

But in two recent Statutes a provision has been made for the revocation of the approval.

Thus, in the case of the By Laws to be made by the London University under 36 & 37 Vict. cap. 55, the Secretary of State may revoke his approval; and in that of the By Law made by the College of Surgeons under 38 & 39 Vict. cap. 43, the Privy Council may at any time revoke their assent.

It will be somewhat difficult to state what will be the effect of such revocation. Of course it cannot

affect previous proceedings, but it will probably render everything done under the By Law in future invalid.

It is, however, to be noticed that, where an occupier of a wharf or dock makes a By Law under the Explosive Substances Act, 38 & 39 Vict. cap. 17, sect. 36, the Secretary of State may require the same to be rescinded, altered, or added to, by a By Law to be made by the occupier.

Whether this requisition can be enforced by a Writ of Mandamus is a question to be settled by the High Court of Justice, if it should arise, but the Statute does not in itself prescribe how it is to be enforced.

It is here to be observed, that though it is no part of the duty of a confirming authority to suggest any By Law to supply what, according to the experience of that authority may be wanting, there can be no objection to its doing so.

Generally such suggestions will be thankfully received by the legislating authority; but if not, their rejection or disregard will not affect the confirmation of the By Laws made by the latter authority; and such confirmation ought not to be refused on this ground.

CHAPTER VI.

OF THE PUBLICATION OF BY LAWS.

The Publication of
By Laws.

I am now led to consider the Publication of By Laws.

The laws enacted by Parliament for the general government of the country are not required to be published at all to render them binding. Special Acts, and Local and private Acts, are not necessarily to be noticed of themselves. In some cases they are only to be established by certified copies from the Parliament roll; in others, the copy printed by the King's or Queen's printers is required by the Statute in question, or the orders of Parliament, to be admitted as proof of its contents. Nevertheless, in these cases the law binds though not published.

But no By Law is binding unless it has been published.

Made under
implied authority.

As regards By Laws made under implied authority, no specific mode of publication has been established. The body declares the By Law, generally causes it to be committed to writing, and preserves that writing among its official documents.

Under
Charter.

When By Laws are made under the authority of a Charter, I believe no provision is made as to the publication of the By Law. Hence the proceeding will be the same as in the case of By Laws made under implied authority.

But, of course, if the Charter contain any direction on the subject, that must be strictly followed.

In the case of *James v. Tintney*, Cro. Car. 497, March 28, or *Tintney v. James*, 1 Roll. Abr. 365, it was held that the proclamation of a By Law made by the jury of the manor in the Lord's Court was of itself sufficient notice to a commoner of that By Law. From this, however, it is to be inferred that there must be such a Proclamation to constitute a Publication.

Proclamation
in the Manor
Court.

But when there has been such publication of the By Law, it binds parties upon whom it can operate, without any specific notice to them individually.

Publication
binds
Strangers.

Where the City of London had, by custom, power to make By Laws affecting strangers, and they did so, it was held to be unnecessary to show that a stranger had notice of a By Law affecting his dealing within the City, before the penalty for a breach of it could be recovered. It was considered that every stranger who would trade in the City should make himself acquainted with the laws therein which affected his trading.—*Corporation of London v. Barnardiston*, 1 Lev. 16; see also the *Mayor of Cambridge v. Herring*, 1 Lutw. 405.

In *Prigge v. Adams*, Skinn. 350, Lord Holt, C. J., says, "The By Laws of a Corporation are more private than a Local Act of Parliament; but if any man comes into a Corporation he ought to take conusance of their By Laws at his peril."

But many of the Statutes which authorise the making of By Laws contain specific provisions as to their publication.

Under
Statutes.

I have found the following:—

The 7 & 8 Vict. cap. 110, sect. 47, required that the By Laws of *Joint Stock Companies* should be

Joint Stock
Companies.

printed and circulated for the use of the Shareholders, and a copy thereof given to every Officer of the Company, and to every Shareholder who should require the same. But the 25 & 26 Vict. cap. 89, which repealed that Act, requires that the Memorandum and Articles of Association shall be registered with the Registrar of Joint Stock Companies, which register is open to all persons; and all special resolutions are to be printed and registered.

Copies of the Memorandum and Articles of Association, as well as of every special resolution, are to be forwarded to every Member on request, and payment of a fee.

Railways.

The *Railway Clauses Act*, 8 & 9 Vict. cap. 20, in section 110, provides that "the substance of such By Laws, when confirmed or allowed, according to the provisions of any Act in force regulating the allowance or confirmation of the same, shall be painted on boards, or printed on paper and pasted on boards, and hung up and affixed, and continued on the front or other conspicuous part of *every wharf or station* belonging to the Company, according to the nature or subject-matter of such By Laws respectively, and so as to give public notice thereof to the parties interested therein or affected thereby; and such boards shall from time to time be renewed as often as the By Laws thereon, or any part thereof, shall be obliterated or destroyed; and no penalty imposed by such By Law shall be recoverable unless the same shall have been published and kept published in the manner aforesaid."

As to what has been deemed to be sufficient publication, see *Motteram v. the Eastern Counties Railway Company*, 7 C. B. (N.S.) 58, *post*, in the Chapter on Evidence.

The 111th Section of the same Act proceeds to enact that such By Laws, when so confirmed, pub-

lished, and affixed, shall be binding upon and observed by all parties, and shall be sufficient to justify all persons acting under the same.

The 26 & 27 Vict. cap. 92, sect. 32, which enables Railway Companies to make By Laws in regard to their Steam-vessels, requires them to be published "by being painted on boards, or printed on paper and pasted on boards, and hung up or affixed and continued on some conspicuous part of every Steam-vessel and landing-place of the Company."

In the Companies Clauses Act, 8 & 9 Vict. cap. 16, sect. 124, and in the Commissioners Clauses Act, 10 & 11 Vict. cap. 16, sect. 96, it is enacted that "a copy of the By Laws made by the Company and the Commissioners shall be given to every officer and servant of the Company and Commissioners affected thereby." Companies' Commissioners.

The Towns Improvement Clauses Act, 1847, 10 & 11 Vict. cap. 34, in section 200, enacts that By Laws made by the Commissioners, if affecting other persons than the officers and servants of the *Company (sic)* shall be published as therein provided, that is, in the manner described in the following passages. Towns Improvement.

The various Model Acts which provided for Markets and Fairs (10 & 11 Vict. cap. 14, sect. 47), for Piers and Harbours (10 & 11 Vict. cap. 27, sect. 88), and for Improvement of Towns (viz. 10 & 11 Vict. cap. 34, sect. 205), contained directions for *the publication of By Laws*. Provisions in Model Acts.

Thus the 10 & 11 Vict. cap. 14, sect. 47, is as follows:—

"The said By Laws shall be published in *the prescribed manner*, and when no manner of publication is prescribed they shall be printed, and the Clerk of *the Undertakers* shall give a printed copy thereof to

every person applying for the same, without charge; and a copy thereof shall be painted or placed on boards, and *put up* in some conspicuous part of the principal office of the *Undertakers*, and also in some conspicuous *place in the Market-place or Fair*; and such boards, with the By Laws thereon, shall be renewed from time to time as occasion shall require, and shall be open to inspection without fee or reward;

“And in case the said Clerk shall not *permit* the same to be inspected at all reasonable times, he shall for every such offence be liable to a penalty not exceeding *five pounds*.”

As regards *Market* By Laws made by an Urban Sanitary Authority, the 38 & 39 Vict. cap. 55, sect. 164, requires that “printed copies of any By Laws so made shall be conspicuously exhibited in the Market.”

In the case of *Piers and Harbours*, the copy is to be put up “in some conspicuous part of the Harbour, Dock, or Pier.”

In the case of *The Improvement of Towns*, the *Commissioners* are substituted for the *Undertakers*, and the notice is required “to be hung up on the front or in some conspicuous part of the office of the Commissioners, and also on some conspicuous part of the works or locality to which the same relate.” In the direction to the Clerk, the word *allow* is substituted for *permit*.

As to Pilotage. By the Mercantile Marine Act, 17 & 18 Vict. cap. 104, sect. 335, it is required that every Order in Council made in pursuance of the provisions of that Act, which allows By Laws made by *Pilotage Authorities* shall be laid before both Houses of Parliament, as soon as possible after the making thereof.

And Section 337 requires the Pilotage Authority to make periodically to the Board of Trade returns of certain particulars with regard to Pilotage, and

among the rest, of all By Laws, Regulations, Orders, or Ordinances relating to Pilots or Pilotage for the time being in force.

These returns are, without delay, to be laid before both Houses of Parliament.—Section 339.

The 18 & 19 Vict. cap. 119, *The Passengers' Act Amendment Act*, 1855, in sect. 82, requires that Rules and By Laws made by Dock Trustees under that Act in reference to *Emigrants* shall be published by the authority of the Secretary of State in the 'London Gazette.'

Emigration.

As regards Public Baths and Washhouses, the 9 & 10 Vict. cap. 74, sect. 35, enacts, "that a printed copy or sufficient abstract of the By Laws relating to the use of the Baths and open Bathing Places respectively shall be put up in every Bath-room and open Bathing-place respectively; and a printed copy or sufficient abstract of the By Laws relating to the use of the Wash-houses shall be kept up in some convenient place near every washing-tub or trough, or every pair of washing-tubs or troughs, in every Washhouse."

Public
Baths and
Washhouses.

The Towns Improvement Clauses Act, 1847 (10 & 11 Vict. cap. 34), in section 140, which relates to the same subject, contains a provision in similar terms.

Towns
Improvement.

Again, the Public Health Act, 11 & 12 Vict. cap. 63, contained a provision for the publication of By Laws made under it, which was extended to By Laws under 21 & 22 Vict. cap. 98; 24 & 25 Vict. cap. 61; and 31 & 32 Vict. cap. 115; and similar provisions were made for the By Laws of Rural Sanitary Authorities by 37 & 38 Vict. cap. 89.

Sanitary.

All these provisions are expressed in the 38 & 39 Vict. cap. 55, sect. 185, which is as follows:—

"All By Laws made by a Local Authority under this Act, or for purposes the same as or similar to those of this Act under any Local Act, shall be printed and hung up in the office of such authority; and a copy thereof shall be delivered to any Ratepayer of the district to which such By Laws relate, on his application for the same.

"A copy of any By Laws made by a Rural Authority shall also be transmitted to the Overseers of every Parish to which such By Laws relate, to be deposited with the public documents of the Parish, and to be open to the inspection of any Ratepayer of the Parish at all reasonable hours."

Thames
Conservancy.

The 27 & 28 Vict. cap. 113, sect. 32, requires the Conservators of the River Thames to cause all By Laws made by them after December 31, 1864, when the same are allowed, together with the Order in Council allowing the same, to be printed, and printed copies thereof to be sold at a reasonable price to all persons desirous of purchasing the same.

The previous Section 4 enacted that "where the Conservators are by that Act required to publish any By Law, they shall do so by inserting the same once in the 'London Gazette,' and by subsequently thereto inserting the same as an advertisement once in each of two successive weeks in some one and the same Daily Morning newspaper published in London or Middlesex, and such publication shall be deemed to be completed on the day on which the second of such advertisements appears."

Special
Rules in Alkali
Works,

As regards the special rules made by the owners of Alkali Works, the 26 & 27 Vict. cap. 124, sect. 13, requires that a printed copy of the *special rules* in force in any *Alkali Work* shall be given by the owner to every person working or employed in or about the work affected thereby.

Again : 27 & 28 Vict. cap. 48, sect. 5, enacts that in Factories, "printed copies of the *Special Rules* in force in any *Factory* shall be hung up, in a legible condition, in two or more conspicuous places in a *Factory*, and a printed copy shall be supplied to every person employed in the *Factory* who may apply for a copy."

The Mines Regulation Acts, 35 & 36 Vict. cap. 76, and Mines. sect. 37, and cap. 77, sect. 28, contain provisions for the publication of the special rules for *Mines* made under those Acts thus :

"The owner, agent, or manager of the mine is required to cause *the rules*, with the name and address of the inspector of the district, with the name of the owner or agent, and of the manager, appended thereto, to be posted up in legible characters in some conspicuous place at or near the mine, where they may be conveniently read by the persons employed," and shall cause them to be renewed when defaced, obliterated, or destroyed.

"He shall supply a printed copy *gratis* to each person employed in or about the mines who applies for the copy at the office at which the persons immediately employed by such owner, agent, or manager, are paid.

"Every copy of such special rules shall be kept distinct from any rules which depend only on the contract between the employer and employed."

Default of compliance with these provisions is an offence under the Act.

The Elementary Education Act, 33 & 34 Vict. Elementary Education. cap. 75, sect. 74, enacts that "all By Laws sanctioned by Her Majesty in Council under that section, shall be set out in an Appendix to the Annual Report of the Education Department."

It does not contain any special provision for their publication by the School Board.

By Municipal
Corporations.

A By Law made by the Council of any Municipal Corporation for the prevention and suppression of nuisances, to which 21 & 22 Vict. cap. 98, sec. 32 applied when confirmed by the Local Government Board, was required to be published as other By Laws made under the Sanitary Acts by 37 & 38 Vict. cap. 89, sect. 46, but, as above noticed, this Act is superseded by the 38 and 39 Vict. cap. 55, sect. 185.

Relating to
the Salmon
Fisheries.

The 36 & 37 Vict. cap. 71, relating to the Salmon Fishery, enacts in sect. 43 that "the said By Laws when confirmed shall be printed, and the secretary or clerk to the said Board shall deliver a printed copy thereof to every person who shall pay licence duty, without charge, and a copy thereof shall be placed and renewed from time to time, on boards, or put in some conspicuous place or places within the district, and shall be open to inspection without fee or reward:

"And in case the said secretary or clerk shall wilfully refuse to deliver or allow the same to be inspected as aforesaid, he shall for every such offence be liable to a penalty not exceeding five pounds."

Petroleum
and Explosive
Substances.

The Petroleum Act (34 & 35 Vict. cap. 105), in sect. 4, requires that every By Law made under it shall, when confirmed, be published in such manner as the Board of Trade may from time to time direct.

The Explosives Act (38 & 39 Vict. cap. 77, sect. 84), provides that "all By Laws, notices, and documents, directed by that Act to be published or advertised shall, save as otherwise provided by that Act, be published in the place which such notices and documents affect, by advertisement in some newspapers circulating generally in such place, or by placards, or handbills, or in such manner as the Secretary of State may from time to time direct as

being in his opinion sufficient for giving information thereof to all persons interested."

It will be seen in chap. ii. p. 46, that the previous clauses, 34 and 35, had required Harbour Authorities and Railway and Canal Companies to make By Laws "as to the publication and supply of copies of their By Laws."

Some Statutes in express terms make the publication a preliminary before the By Law shall become binding. Thus the Statute relating to Joint Stock Companies, 7 & 8 Vict. cap. 110, sect. 47, after providing for the publication of the By Laws, enacted that "no penalty imposed by any such By Law shall be recoverable unless the same shall have been published and kept published in manner aforesaid."

Publication preliminary to the Validity of By Laws.

As previously noticed, this Act was repealed for the future by the 25 & 26 Vict. cap. 89.

The Markets and Fairs Act, 10 & 11 Vict. cap. 14, sect. 48, enacts that "all By Laws made and confirmed according to the provisions of this and the special Act, *when so published, and put up*, shall be binding upon and be observed by all parties, and shall be a *sufficient warrant* for all persons acting under the same."

Markets and Fairs.

The provision in the Improvement of Towns Act, 10 & 11 Vict. cap. 34, sect. 206, is in almost the same words.

Provisions are contained in some Acts for the protection of these public notices.

Thus in the Companies Clauses Consolidation Act, 8 & 9 Vict. cap. 16. sect. 146, it is enacted that "if any person pull down or injure any board put up, or affixed as required by this or the special Act, or any Act to be incorporated therewith, for the purpose

Penalty for damaging notices of By Laws.

of publishing any By Law, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expense attending the restoration of the board."

The same provision is contained in 8 & 9 Vict. cap. 20, sect. 144, in reference to the By Laws of Railway Companies.

In *The Towns Improvement Clauses Act*, 1847, 10 & 11 Vict. cap. 34, sect. 208, the language is a little different. It is as follows :

"Any person who destroys, pulls down, injures or defaces any board on the premises of the Commissioners, on which any By Law of the Commissioners is painted or placed, shall for every such offence be liable to a penalty not exceeding *five* pounds."

In the *Mines Regulation Acts*, 35 & 36 Vict. cap. 76, sect. 58 ; cap. 77, sect. 29, it is enacted that "every person who pulls down, injures, or defaces any proposed special rules, notice, abstract, or special rules, when posted up in pursuance of the provisions of those Acts with respect to special rules, or any notice posted up in pursuance of the special rules, shall be guilty of an offence against those Acts."

The 38 & 39 Vict. cap. 55, sect. 306, enacts that "any person who destroys, pulls down, injures, or defaces any board on which any By Law, notice, or other matter is inscribed, shall, if the same was put up by the authority of the Local Board, be liable for every such offence to a penalty not exceeding Five Pounds."

Where there are no such provisions, reliance may sometimes be placed upon the general criminal law contained in the Statute 24 & 25 Vict. cap. 97, relating to *Malicious Injuries of Property*.

CHAPTER VII.

OF THE ENFORCING THE BY LAW.

I HAVE now to consider how a By Law may be enforced; because to pass a law and not to be able to enforce it is a futile operation. It will be found, however, that ample means have been provided for rendering a By Law, when made under due authority—in conformity with that authority—in legal form—reasonable and legal in itself—duly confirmed and published—binding upon the parties subject to it, and enforceable by regular process of law.

How By Law may be enforced.

The modes of enforcing By Laws are numerous, depending somewhat on the nature of the By Law, but mainly upon the authority under which it is made.

Enumeration of the several methods.

I have ventured to arrange all those which have come for consideration under the following heads.

1. Disqualification and amotion, or expulsion.
2. Oath.
3. Bond.
4. Act of the Governing Body, such as stoppages or the demolition of works.
5. Avoidance of Acts.
6. Suspension, revocation, or cancelling of Licence.
7. Arrest and Imprisonment.
8. Distress on offenders' goods.

9. Pecuniary Penalty recoverable by action, or by summary process.

10. Injunction from the High Court of Justice.

It is right, however, to observe, preliminarily, that where power is given by Charter, or by Statute, to enforce the By Law in a particular manner, the authority is precluded from prescribing any other.—*Kirk v. Nowell*, 1 T. R. 124.

1. Disqualification and Amotion.

First. The penalty imposed for the breach of a By Law may be the *disqualification* of a member of the body which makes the By Law to continue in his membership or hold any office in that body. This may be followed by *amotion*, or *removal* from the membership or office.

It is stated in the case of *Bab v. Clerk*, Mo. 412, and admitted by the Court of King's Bench in the case of *The K. v. The Company of Fishermen of Faversham*, 8 T. R. 352, that at least by custom there might be a power of disfranchisement or removal from a Corporation for breach of a By Law.

Lord Mansfield, C. J., in the course of a judgment in *R. v. Richardson*, 1 Burr. 539, says, "Suppose a By Law made to give power of amotion for just cause, such By Law would be good."

When ground not sufficient.

But the Courts have scrutinised the nature of the case provided for, and have not allowed such a penalty to be inflicted for what appeared to them to be an insufficient cause.

Thus, in the case of *The Mayor of Ripon*, 1 Sid. 282, on a return to a Mandamus, it was alleged that the Mayor was deposed, because he would not pay his share in the cost of renewing the Charter, and it was held that this was a bad return; and the Court held that the Mayor could not be deposed or im-
pri-

soned, but should be sued upon the By Law, though the case does not show that any By Law had been made.

Again, in *K. and Busfield v. Town of Ripon*, 2 Keb. 15 & 26, a By Law was made requiring the members of the Corporation to pay a sum of money by assessment to meet the costs of proceedings to protect the claim of the Corporation to certain Common rights. On non-payment of his assessment the Corporation removed an Alderman without first summoning him. It was held that there was no just cause of amotion, but whether because this By Law did not warrant this disfranchisement, or because of the want of a previous summons and hearing, does not appear from the report.

And where the cause of amotion may be sufficient in itself, the body removing must pursue the usual course of all judicial proceedings in reference to persons charged with offences. Thus, in this last case it will be seen that one objection was that the party had not been summoned. Then in the case cited above from the 8 T. R. 352, the Court held that in every such case there must be due proof of the offence; that the order for disfranchisement or removal must be pronounced by the whole body in whom the power rests; and farther, that to charge a member with an offence, and because he refuses to answer, proceed to remove him, is insufficient.

Usual course
of proceeding
required.

As a By Law may be enforced by amotion, it follows as a correlative proposition that when a By Law regulates the mode of admission to corporate offices or rights, it may be enforced by the refusal to admit, where it is not obeyed.—*Green v. The Mayor of Durham*, 1 Burr. 127. The validity of such a By Law, or the correctness of the proceedings under it, will be tested in proceedings by Mandamus to admit the claimant to the office.—*Ib.*

Refusal of
admission.

The same rule would prevail if the By Law related to the Qualification of the party.

By the custom of the Borough of Hedon, all persons apprenticed to any freeman residing within the town were entitled to the freedom of the Corporation. A By Law was made enacting that no person should be so entitled unless he should within four years of the date of the Indenture cause it to be enrolled by the Town Clerk in the books of the Incorporation.

A lad was apprenticed to a master whose business was carried on at Hull, and who only resided at Hedon for some of the summer months. The service was on board ship. The Clerk refused to enrol the Indenture, and the Court of Queen's Bench held that he was justified in so doing; that no benefit could result to the Borough of Hedon, because the service could not be performed there, an inland town, and the lad was apprenticed to a mariner. It was a kind of fraud upon the By Law.—*The K. v. Marshall*, 2 T. R. 2.

In 2 Chitty's Rep. 144, a Mandamus was moved against *The Mayor of Cambridge* to admit as a freeman a person who claimed by apprenticeship. The By Law required his Indenture to have been enrolled with the Town Clerk, and that he should have resided in the Borough. The Indenture was taken to the Town Clerk for enrolment, who made a memorandum that it had been enrolled, but no enrolment could be found in the Corporation books. The Court held that this was sufficient for the applicant. As regarded the residence, however, the apprentice had for the last six years of his time lived at Royston, carrying on his master's trade there, and upon this point the Court held that this could not be deemed to be a residence under his Indenture at Cambridge.

Where duties are prescribed to the officers of public bodies, and are set out in By Laws, it is obvious that the breach of such By Laws by the neglect of any duty can be followed by removal from the office.

This may doubtless be met by special contract, in which some provision of a different character may be made.

The subject of By Laws made by Voluntary Associations for the government of their proceedings and the conduct of their members has been adverted to in a former chapter. Expulsion
from Clubs
or Societies.

So far as their members are concerned, such By Laws are usually enforced by *Expulsion*. A member who disobeys a By Law is liable to be expelled from the Association, if power of expulsion is reserved by the constitution of the Society, or the particular By Law.

Where the governing body of the Society enforce a By Law by such means, acting *Bona Fide* and not capriciously or oppressively, there is no legal mode of reversing such action.

Whether any remedy exist in case of injustice when the Association has no property is questionable.

The cases of *Hopkinson v. The Marquis of Exeter*, L. R. 5 Eq. 63, and *Lytleton v. Blackburn*, 33 L. T. 641, 45 L. J. Ch. 219, which relate to Clubs, illustrate these remarks.

A second mode of enforcing a By Law which has been brought under notice is by means of an *oath*. But the Courts of Law have been averse to admitting it.

2. By Oath.

In *R. v. Jay*, 3 Keb. 714, it is said by Twisden, J., "An oath cannot be imposed by a By Law."

And in *Rex v. Dean and Chapter of Dublin*, 1 Stra. 536, the Court of Queen's Bench expressed their opinion that, where a Dean and Chapter had power by Charter to make statutes and ordinances for the better government of the Church, they could not require a Canon, before admittance to his stall, to take an oath of canonical obedience to the Dean, to observe the Statutes and customs of the Church, and to keep the secrets of the Chapter. The case was, however, decided upon another point. It is cited in Com. Dig. *Serement* (B.), from 2 Mod. 27.

It will doubtless be remembered that the Legislature, in many Statutes, have required oaths to be taken, and declarations to be made, with more or less solemnity as a precedent condition upon the exercise of public offices or functions.

But Lord Coke, in 2 Inst. 479, declares that a new oath cannot be imposed upon any Judge, commissioner, or other subject, without the authority of Parliament.

However, a By Law, imposing a penalty on a person not accepting the office of Sheriff, unless he made oath, and brought six other responsible persons to support him, that he was not worth a certain sum, was held to be free from objection. The oath in this case was for the benefit and release of the party.—*City of London v. Vanacre*, 1 Ld. Raym. 500, Carth. 483.

In the case of *Carter v. Saunderson*, 5 Bing. 92, which has been noticed on page 118 above, there was a provision in the By Law that the party required to supply the feast might excuse himself by swearing that he was not worth 300*l.*; and Best, C. J., expressed his opinion that this rendered the By Law bad, on the ground of the impolicy of multiplying oaths, which he described as "illegal to take, and illegal to administer." The other Judges did not join in this judgment.

A third mode of enforcing a By Law would be by requiring the party affected by it to enter into a Bond to obey it. It does not readily occur to me that there is any legal objection to such a course of proceeding, but there is an observation by *Hale, C. J.*, in *Ray*, 227, that a bond, conditioned to perform a By Law, had been held to be void; and this remark is adopted in *Com. Dig. By Law*.

3. By Bond.

I have not found the case in which this decision was pronounced, nor can I gather the ground of the objection. I can only surmise that this mode of proceeding rendered the By Law special in its character, instead of general; allowing it to be enforced by the governing body when it thought proper to enforce it, or to be omitted where it thought otherwise.

It is obvious that if the By Law was illegal, that might have been shown in any proceedings to enforce the bond on breach of the condition.

A fourth mode is by the act of the Governing Body against the party bound to obey the By Law.

4. The act of the Governing Body.

A Trading Company, existing by ancient usage, but confirmed by Statute, was empowered to make By Laws for regulating the Company, with fines and penalties for the breach of such laws, and for prohibiting its members from trading elsewhere; such penalties to be *stopped out* of the money arising from the trade. A By Law was made prohibiting trading elsewhere, under a penalty of £10; and, in case of refusal to pay, the member to be excluded from all share of the profits to be thereafter made by the trade of the Company. This was held to be a void By Law, as exceeding the power given by the custom. It appears to be admitted that a *stoppage* of the fine out of the profits would have been lawful, but not a withholding of all the profits.—*Adley v. Reeve*, 2 M. & S. 53.

Where a Navigation Company can make By Laws as to the river or canal, and they make one which can be best enforced by stopping the navigation, it seems from *The Calder and Helder Navigation Company v. Pilling*, 14 M. & W. 84, that they may lawfully adopt this course.

Pulling
down erections.

Under this head may be classed the power which was given to Local Boards by the 21 & 22 Vict. cap. 98, sect. 34, now repealed, but re-enacted in the 38 & 39 Vict. cap. 55, sect. 157, to provide for the observance of the By Laws which they made respecting buildings, by enacting therein "such provisions as they think necessary as to their power, subject to the provisions of that Act, to remove, alter, or pull down any work begun, or done in contravention of such By Laws."

At the same time, it may be noticed that this power does not prevent the authority from prescribing and recovering a pecuniary penalty for the breach of the By Law, instead of demolishing the works.—*Hall v. Nixon*, 44 L. J. M. C. 51; L. R. 10 Q.B. 152.

In framing a By Law upon this enactment, the Local Board must be careful not to take any action without giving the party complained of an opportunity of being heard in defence.

The 18 & 19 Vict. cap. 120, sect. 76, *The Metropolitan Building Act*, empowered a District Board of Works in the Metropolis to pull down works erected within the district, and was silent as to previous notice to the owner or occupier. But it was held by the Court of Common Pleas that the Board could not pull down an erection without previously giving notice to the builder, and giving him the opportunity of being heard against such action.—*Cooper v. Wandsworth Board of Works*, 8 L. J. (N. S.) 278.

By Laws, therefore, which give this power without

enabling the builder to be heard, cannot be upheld as legal, though if, in fact, the builder had been heard, the Courts might hold that the proceeding was justified.

The above clause in the Local Government Act, 1858, did not contain any provision as to the expenses. Recovery of Expenses. Many Local Boards made a By Law enabling them to recover such expenses. But such a By Law appeared to be quite beyond their powers. Therefore, in the recent Sanitary Law Amendment Act, 37 & 38 Vict. cap. 89, sect. 42, a provision was made, which is now expressed in the 38 & 39 Vict. cap. 55, sect. 158, thus: "Where any Urban Authority incur expenses in or about the removal of any work executed contrary to any By Law, such authority may recover, *in a summary manner*, the amount of such expenses, either from the person executing the works removed, or from the person causing the works to be executed, at their discretion."

With regard to this recovery *in a summary manner*, it is to be observed that the 11 & 12 Vict. cap. 63, sect. 129, provided for the procedure in regard to the recovery of money under it in a summary manner, which is re-enacted in 38 & 39 Vict. cap. 55, sect. 251. Both authorised a conviction in summary proceedings before Justices in Petty Sessions, and sect. 269 of the last Act gives an appeal to the Quarter Sessions against it.

These clauses, as it must be observed, are confined to the removal of works, and do not in terms apply to alterations.

The Petroleum Act, 1871 (34 & 35 Vict. cap. 105), having empowered the Harbour Authority to make By Laws in reference to Petroleum, by sect. 4, enables "the Harbour Master, or any other person acting under the orders of the Harbour Authority, to cause any ship or cargo (moored, landed, or otherwise dealt Removal of dangerous substances.

with in contravention of any such By Law) to be removed at the expense of the owner thereof to such place as may be in conformity with the By Law, and the expenses are to be recoverable as penalties under the Act" (*i. e.* in the manner prescribed by the summary jurisdiction Acts).

The Explosive Substances Act, 1875 (38 & 39 Vict. cap. 17), provides as part of the penalty of a breach of a By Law made under the authority of that Act, the forfeiture of all or any part of the gunpowder in respect of which the breach of the By Law has taken place (see sects. 34 & 35). The Act in sect. 96 afterwards provides for the dealing with the forfeited article.

The following case also illustrates this mode of enforcing a By Law.

By a Local Act a Vestry had power to appoint stands for Hackney Carriages by a By Law, and to impose a penalty for the breach thereof; and by another Local Act persons were prohibited from placing carriages on carriage-ways, except such carriages as stood for hire according to the By Laws, under a penalty, and power was given to the authority named to *seize any carriage* placed contrary to this provision, and remove it to an appointed place to be detained until the penalty was paid. Thus the By Law was, in fact, enforced by means of this seizure and removal.—*Frost v. Williams*, 7 Ad. & E. 773.

It is sometimes sought by the framers of By Laws to enact that in cases where the By Laws are infringed by the use or exercise of prohibited articles, some officer or appointed person shall seize and take away the article which is the instrument of offence. But I apprehend that such By Law cannot be supported without express statutory authority.

Here, however, I may notice that 3 & 4 Vict. cap. 97, sect. 111, and the Railway Regulation Act, 8 & 9 Vict. cap. 20, sect. 108, referring to By Laws made by the Company, enacts "that if the infraction or non-observance of any such By Law or other such Regulation as aforesaid be attended with danger or annoyance to the public, or hindrance to the Company in the lawful use of the Railway, it shall be lawful for the Company summarily to interfere, to obviate, or *remove* such danger, annoyance, or hindrance, and that without prejudice to any penalty incurred by the infraction of any such By Law."

The Fifth mode of enforcing the By Law is by the avoidance or nullifying of an act done in violation, or in disregard of a By Law.

5. Avoidance of an act done contrary to the By Law.

Thus a Local Board had passed a By Law enacting that no resolution be rescinded or altered without a certain notice in writing to all the members of the Board. A resolution had been passed and acted upon, imposing certain rates upon separate parts of the district. Some time afterwards, without any notice, the Board passed a resolution that there should be one general district rate for the whole district, and the same was made accordingly. This rate was appealed against to the Quarter Sessions, and the Court of Queen's Bench, upon a case submitted to them, held that the By Law prevented the resolution from being passed, no notice having been given, and that the rate was bad and should be quashed.—*Mayor v. Burslem Local Board*, 39 J. P. 437.

At the same time it must be admitted that the breach of a By Law does not necessarily render the Act done in contravention of it void, inasmuch as it may be supported *aliunde*.

A Dean and Chapter had, as it was alleged, appointed a Clerk to a living. The presentation was sealed by some of the members of the Chapter but not by a majority, and it was objected that the seal was not duly affixed. It had been urged that though generally a majority of a Corporation must concur in a corporate act, yet by usage that rule may be altered. It was also alleged that this usage proved the original constitution, and when it was stated that there were *orders* of the Dean and Chapter which required a ten days' notice to be given before any act, Lord Holt, C. J., answered that a By Law may subject persons to penalties but cannot make an act void which is warranted by the original constitution.—*Dr. Hurscot's Case*, Comb. 203.

6. Dealing
with a Licence.

A sixth mode of enforcing a By Law occurs in particular cases, namely, the suspension, revocation, or cancelling, of a Licence under which the person who violates the By Law carries on his business, art, or profession.

Thus in the 10 & 11 Vict. cap. 34, *The Towns Improvement Clauses Act*, 1847, sect. 129, it is provided that

"The Justices before whom any person is convicted of the non-observance of any of the By Laws or regulations made by virtue of this or the special Act, in addition to the penalty imposed on such person under the authority of this or the special Act, may *suspend* for any period not exceeding two months the *Licence* granted to such person under this or the special Act, or in case such person be the owner or proprietor of a registered slaughter-house or knacker's yard, may *forbid* for any period not exceeding *two months* the *slaughtering* of cattle therein;

"And such Justices, upon the conviction of any person for a second or other subsequent like offence may, in addition to the penalty imposed under the authority of this or the special Act, declare the *Licence* granted under this or the special Act *revoked*; or if such person be the owner or proprietor of any registered slaughter-house, may *forbid absolutely* the *slaughtering* of cattle therein."

A similar provision is contained in the Metropolitan Slaughter House Act, 37 & 38 Vict. cap. 67.

Again, in the 10 & 11 Vict. cap. 89, *The Town Police Clauses Act*, 1847, it is provided in sect. 50 that

“The Commissioners may, upon conviction for the second time of the Proprietor or driver of any *Hackney-carriage* for any offence under any By Law made in pursuance of the provisions of that or the Special Act, *suspend or revoke*, as they deem right, the *Licence* of any such proprietor or driver.”

The 16 & 17 Vict. cap. 41, sect. 12, contained a provision which is repeated in 38 & 39 Vict. cap. 55, sect. 88, in the following words:—“Where the keeper of a common Lodging House is convicted of a third offence against any of the provisions of this Act relating to Common Lodging Houses” (and the breach of a By Law is an offence), “the Court before whom the conviction for such third offence takes place may, if it thinks fit, adjudge that he shall not, at any time within five years after the conviction, or within such shorter period after the conviction as the Court thinks fit, keep a common Lodging House without the previous Licence in writing of the Local Authority, which Licence the Local Authority may withhold or grant on such terms and conditions as they think fit.”

But this power must be given by Statute. Some Local Boards who are empowered to license, endeavour to retain power of revoking or cancelling the Licence when in their judgment the By Law is broken. This, however, cannot be supported. They would make themselves judges in their own case, inasmuch as they would complain of the breach of the By Law, and then themselves determine the fact by cancelling or suspending the Licence.

In the cases above referred to there must be a conviction by an independent tribunal of a breach of the By Law before the Licence can be suspended or revoked.

In *The Infant Life Protection Act*, 1872 (35 & 36 Vict. cap. 38) it is provided in sect. 9 that, after a conviction for an offence under it (and one offence is the violation of the By Law), the offender will be liable, in addition to the other penalty, to have his name and house struck off the Register.

7. Arrest and Imprisonment. A seventh mode of enforcing a By Law is by Arrest and Imprisonment.

It was, indeed, laid down in many early cases that a By Law could not be enforced by Imprisonment. See *Clark's C.*, 5 Co. Rep. 64, cited in 1 Roll. Abr. 363, 366, and referred to in 8 Co. 253 (127), where the By Law related to an assessment of a general nature.—*Waggoner v. Fish*, 2 Brownl. 288.

In *Bab v. Clerk*, Mo. 411, it was held that a By Law in a Corporation, that a person who used opprobrious words against the Mayor should be imprisoned was illegal, as a By Law could not be enforced by imprisonment.

And in 1 Roll. Abr. 364, a case (*Hardcastle's C.* in 14 Charles I.) is cited where the King granted a Charter to the Company of *Souremakers** (*sic*) of London with power to make ordinances, and they made an ordinance that no one should use that trade who was not free of the Company, under a penalty of 40s. per week, which was to be enforced by *imprisonment*; and the Court held that this was a void ordinance, as it was not legal to impose the imprisonment.

This is also confirmed by *King v. Clerk*, 1 Salk. 349; *Player v. Pettit*, 1 Keb. 507; *Mayor of Exeter v. Starre*, 2 Show. 159; and by the Judgment of Best, C. J., in the case of *Carter and Another v. Sanderson*, 5 Bing. 89.

* Mr. D. P. Fry informs me that King Charles I. granted a charter to the *Soapmakers** Company in the 13th year of his reign, though this Company is now extinct.

Nevertheless, in *K. v. Cowle*, 3 Burr. 846, a Charter of 1 Jas. 1 to the town of Berwick-upon-Tweed is set out, which gave to the Corporation power to make By Laws, and to enforce them by *imprisonment*.

And a similar power occurs in another Charter of the same reign, set forth in *Piper v. Chappell*, 14 M. & W. 624.

But no point arose in either case upon this power.

It will be found that in the City of London, and probably in some other places, a customary right to imprison for what may be called Municipal offences existed, and possibly such custom might sustain a By Law framed upon it. — See *Wallis C.*, Cro. Jac. 555; *R. v. Merchant Taylors of London*, 2 Lev. 200; *City of London v. Coals*, 2 Keb. 752; *Wood v. The Corporation of London*, 2 Salk. 397.

But though the common law, may not support any attempt to enforce a By Law by Imprisonment, the Legislature have not refused to sanction that course of proceeding in some few cases where it has appeared to be necessary for the effectual enforcement of the law. It will be seen that in the following Statutes *arrest* is authorised where there is a charge of a breach of a By Law.

Arrest of offenders on Railways, and other transient offenders.

The 3 & 4 Vict. cap. 97, sect. 13, enacts that it shall be lawful for any officer or agent of a Railway Company, and for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any Engine Driver, Guard, Porter, or other servant *in the employ of such Company*, who shall commit any offence against any of the By Laws, rules, or regulations of such Company, and to convey him before some Justice of the Peace of the place within which the offence shall have been committed, without any other warrant or authority than that Act.

The person so offending is then made subject to a summary conviction before the Justice, and punishable by imprisonment, with or without hard labour, or by a fine not exceeding £10.

The Justice, instead of deciding summarily, may commit for trial at the Quarter Sessions, which Court, upon conviction, may award an imprisonment for two years.

This was extended by the 5 & 6 Vict. cap. 55, sect. 17, to waggon drivers and other persons employed by the Company, and to the officers, servants, and persons *employed by any other Company*, or person in conducting traffic upon the Railway, or in repairing and maintaining their works.

The Companies Clauses Consolidation Act, 1845, 8 & 9 Vict. cap. 16, sect. 156, empowers "any Officer or Agent of the Company, and all persons called to his assistance, to seize and detain any person who shall have committed any *offence* against that Act, or the Special Act, or any Act incorporated therewith, and whose name and residence shall be unknown to such officer, or agent, and convey him with all convenient despatch before some Justice without any warrant or other authority than that or the Special Act, and such Justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender."

A like clause is contained in *The Railways Clauses Consolidation Act*, 8 & 9 Vict. cap. 20, sect. 154.

It appears that breaches of By Laws for penalties imposed, to be recovered summarily, are treated as offences under these Acts.

Upon one of the Statutory provisions applicable to this mode of enforcing a By Law, the following case has occurred: A Railway Company had power to make By Laws for, among other things, the management of the undertaking, and to impose reason-

able fines and forfeitures upon all persons offending against the same. They were empowered to make orders for regulating the travelling upon the Railway, and the travellers passing thereon, such orders to be binding upon such travellers on pain of forfeiting a sum not exceeding £5, which the Company might attach to a default. Penalties and forfeitures imposed by the Act, or by any By Law, were to be recovered summarily before Justices, one-half to the informer, and the other to the Company. Power was given to any officer of the Company to seize and detain any person whose name and address was unknown, who should commit any offence against the Act, and to convey him before a Justice without a warrant.

The Company made a By Law that a passenger not producing a ticket on leaving the premises of the Company, should pay a fare from the place whence the train started originally.

It was held that this was not a By Law imposing a penalty, and therefore no power was given to arrest a passenger who did not produce his ticket.

The Court doubted whether any authority to arrest was given for breach of a By Law, and if so whether this By Law was reasonable.—*Chilton v. London and Croydon Railway Company*, 16 M. & W. 212.

By 18 & 19 Vict. cap. 119, sect. 82, *The Passengers' Act*, 1855, the Trustees of any Docks or Basins in any port in the United Kingdom from which emigrants are despatched may by their officers or servants or any Police officer arrest and detain any person charged with the breach of any rule or By Law made by them until brought before a Justice, who is thereby authorized to adjudicate on the offence in a summary way. Passengers' Act.

The Recent Public Health Act, 38 & 39 Vict.

cap. 55, sect. 161, enables an Urban Sanitary Authority to make By Laws to provide for the removal from any public walk or pleasure-ground of any person infringing the By Law for the regulation thereof by any officer of such authority or constable.

8. By Distress.

The eighth mode of enforcing a By Law is by *Distress* upon the offender's goods.

Upon this mode there has been much discussion. In many cases the distress has been supported as a lawful mode of proceeding, in others it has been rejected.

In *Clarke's Case*, 5 Co. 64, where a By Law was made in the shape of an Assessment for the expenses of providing a Court-house and keeping the town clean at the Assizes, it was intimated by the Court that a penalty for refusal of payment might be enforced by Distress.

Custom required to support Distress.

According to 1 *Rolle Abr.* 367, there must be a custom to recover the penalty by distress, or the By Law must prescribe that mode of recovering it; and it was stated that a power of distress to enforce a By Law must be established by proof of the custom in *E. of Exeter v. Smith*, 2 Keb. 367.

In *Moir v. Murray*, Say. 183, Ryder, C. J., says, "It is laid down in *Waggoner's Case*, and has been holden in divers cases, that a power of distraining for a penalty due by custom can be given by a By Law."

Waggoner's Case here referred to is *Waggoner v. Fish*, 2 Brownl. 288, reported under the name of *The City of London's Case*, 8 Co. 253.

The custom to impose this means of enforcing a By Law was found principally in Manor Courts.

Where by the custom of a manor the Court Baron was empowered to make By Laws, it was held that a By Law made by the homage before the Steward, that a person chosen by the homage to be field-reeve refusing to serve should forfeit £10, to be levied by *distress*, was valid. The Court of King's Bench held that this penalty was covered by the custom.—*Lambert v. Thornton*, 1 Ld. Raym. 91.

Rolle, in his Abr., vol. i. p. 561, lays it down that where by custom the homage of a manor could make By Laws for the government of the Common under a penalty, a custom that the Lord might distrain the cattle of any offender against the By Law on any part of the manor, even on the Lord's own ground, was good. He cites Dyer, 322.

There is a short note of a case, *K. v. Arnold*, 2 Keb. 526, where it was held that an indictment could not be sustained against a person who rescued cattle taken *damage feasant* in breach of a By Law made for the regulation of a common, and which had been presented in the Court Leet. It does not, however, appear from the report whether the By Law was made under any custom.

But though there may be a distress to enforce obedience to the By Law, there are authorities which decide that the goods distrained cannot be sold.—See *Clark v. Tucker*, 3 Lev. 281; 2 Ventr. 183. Distress not to be sold.

In *Arris v. Bradshaw*, 1 Keb. 733, there was a By Law, founded on a Charter, in the Borough of Chipping Wickham to prohibit a person from setting up a shop in the Borough without a licence, under a penalty of 10s. per month, and in default of payment that he should be liable to a distress. The Court of Queen's Bench held that this did not justify a sale of the goods distrained.

This ruling of the Court was carried so far that

where the By Law having authorized the distraining and selling certain goods, and they were only distrained and not sold, the Court held the distress to be illegal, because the question turned upon the whole By Law.—*Clark v. Tucker*, 2 Ventr. 183.

It must be admitted that the power of distraining without the power of sale can be but an inefficient remedy, and this was pointed out in *Lee v. Wallis*, 1 Keny. 292; Say. 263. There a By Law was made imposing a penalty of £10 to be recovered by distress and sale of the goods of the offender, and it was held to be bad. Though the distress would have been good, as inconveniencing the offender, the sale was not. It was objected that this ruling rendered the distress irreprevisable, which is contrary to the general law. But the objection was of no avail.

Forfeiture
of goods not
lawful,

This ruling may have proceeded upon the previous decisions, which laid it down that the penalty of a By Law could not be recovered by forfeiture of goods.—See *City of London's Case*, 8 Co. p. 253 (127); 3 Leo. 264; 2 Brownl. 288; confirmed by a decision in modern years.

unless by
Statute.

In *Kirk v. Nowell*, 1 T. R. 118, it was decided that where a power of making By Laws is granted by a Charter, the By Law cannot be enforced by a forfeiture of goods. Although a Statute might give such a power, it must be given in distinct terms, and therefore a power to make laws and ordinances, and to impose pains, punishments, and penalties, by fine or amercement, or either of them, did not authorize a By Law to seize goods made in violation of a By Law.

It is to be noticed that in the case of explosive substances the Legislature have recently authorized the forfeiture of the article which is the subject of the By Law that has been broken, by 38 & 39 Vict. cap. 17, sects. 34, 35, 36.

Reverting again to the subject of the distress, it is right to refer to the above case of *Moir v. Murray*, Say. 183, as it was there held that where there was a custom imposing a certain penalty on a non-freeman for exposing goods for sale, another custom, which authorized a distress upon *all* the goods exposed, however much they might exceed the amount of the penalty, was invalid.

When a By Law was made in a Manor Court, by which the inhabitants of a place within the manor were required to repair a bridge under a penalty, it was held that the amount of the whole penalty could not be recovered by distress on the goods of one of those inhabitants.—*Wells v. Cotterell*, 3 Lev. 49.

In proceeding to enforce the By Law by distress, it must be observed that if a demand of the penalty previous to distraining is not required in terms, it is to be implied, and consequently must be proved in any action arising out of the By Law. If no such implication can be raised, the By Law will be void as *unreasonable*.—*Davis v. Morgan and Others*, 9 L. J. Rep. 153; 1 Cr. & J. 587. Previous demand requisite.

The ninth, and most general mode of enforcing a By Law is by a *pecuniary penalty*. 9. By Pecuniary Penalty.

It was established in early times that the body who had authority to make a By Law could impose a pecuniary penalty, to be recovered from the person bound by the same law who violated it.—See *The Chamberlain of London's Case*, 5 Co. R. 63; 3 Leo. 264; *Clark's Case*, 5 Co. R. 64; 1 Roll. Abr. 367; *Dyer*, 321.

And in the recent case of *Hall v. Nixon*, 44; L. J. M. C. 54; L. R. 10 Q. B. 152; Lush, J., recognised the existence of this power.

It was considered that the power to impose and

recover the penalty was a necessary incident to the power of making the By Law, so that where this latter power existed by custom, it was not necessary to prove a custom to impose a pecuniary penalty.—*Earl of Exeter v. Smith*, 2 Keb. 367.

Requisites
as to this
Penalty.

Many questions have, nevertheless, arisen in reference to the imposition and the recovery of the penalty.

The amount.

Thus it is necessary that the authority should specify in the By Law the sum to be paid as the penalty, since no action can be maintained for the breach of the By Law if no penalty be assigned for the breach.—*Mayor and Burgesses of Wokingham v. Johnson*, C. t. H. 284.

Persons to re-
ceive penalty.

Then it is advisable that the By Law should specify the person or persons to receive the payment. Indeed, it may almost be said that this is absolutely requisite.

It may not be necessary that any provision should be made as to the Court in which the proceedings for the recovery of the penalty shall be taken. But it has been generally admitted that at least some authorities could make such a provision.

I must make some further remarks upon these propositions.

As to the
persons to re-
ceive the
penalty.

First, as to the person to receive the penalty. The makers of the By Law may provide that it shall be paid to themselves, or to some specified body or person for their use.

If no person be mentioned in the By Law to or for whom the penalty is to be paid, either the Court must presume that the penalty is to be paid to the governing body (and this is the view taken in 2 Kydd on Corp. p. 157), or the By Law will be void for uncertainty, except in the cases to be noticed hereafter, where there is a Statutory provision for the application of the penalty.

In *Wood v. The Corporation of London*, 2 Salk. 397, the Common Council of London made a By Law, and imposed a penalty of £400 on the breach of it, of which £300 was to be paid to the use of the Mayor and Commonalty of the City; and it was held that there was no objection to the By Law on this ground, as the By Law could only be enforced by punishment, pecuniary, or by imprisonment; and the latter could not be supported except by express custom.

In the report of the same case in 12 Mod. 686, Holt, C. J., is reported to have said "that the pecuniary penalty could only be levied by distress or debt, for there can be no other remedy;" and he stated that "the penalty might go to the Corporation."

It is also competent for the authority to name the person who is to sue for the penalty; though this is not necessary when there is any custom which points out who is the proper officer to sue. Effect of Custom.

Thus in London the custom enables the Chamberlain to sue for the penalty in the Courts of that City. — *Wilford v. Masham*, Mo. 403. And the Court of King's Bench, in *Bosworth v. Herne*, C. t. H. 405, and in *Groves v. Colby*, 9 A. & E. 374, recognised this power of the Chamberlain of London to sue, partly because he is in some respects a Corporation sole, and partly because of the custom; but the proper reason appears to be that he is only the Treasurer or Officer of the Corporation, and will recover the penalty for them.

It follows readily that a By Law in the City of London could direct the penalty to be recovered by the Chamberlain.—1 Roll. Abr. 366, citing 5 Co. 63.

But the Courts of Law have been strenuous in requiring that the person to recover must not be a stranger. They could not abide the interference of Strangers not to receive or recover.

persons who had no interest in the litigation other than the penalty.

In a variety of cases questions arose upon By Laws made by the Common Council of the City of London with reference to cars, carts, and carters. The Corporation claimed a right to have them licensed, and the number limited. They assigned the power of granting the licence to several bodies, and among others to the Governors of Christ's Hospital. The By Law allowed those Governors to charge and receive an annual sum for each licence, and enacted that the penalty upon unlicensed persons who worked the cars or carts should be paid in moieties, one to the Informer and the other to those Governors. The Court of King's Bench decided that the By Law was invalid on this ground.—*Player v. Vere*, *Ld. Raym.* 288, 324.

It was afterwards determined by the Court of Exchequer Chamber, in the case of *Bodwick v. Fennell*, 1 Wils. 233, that a Corporation which made a By Law imposing a penalty for breach of a custom prohibiting the trading of strangers in the borough could not enable a stranger to sue for it. It was admitted that the Chamberlain of a city or borough might sue for it, because he acted for the city or borough, and for its benefit. A case of *Ellington v. Cheney*, 9 Geo. 2, was cited, where the master of a guild brought an action for a penalty payable to him, and it was held to be maintainable. Another case of *Hollings v. Hungerford*, 3 Geo. 1, was also cited, where the Chamberlain of Bristol recovered in an action on a By Law a penalty, payable for the use of the Corporation.

In *Pierce v. Bartrum*, *Cowp.* 269, the Chamberlain of Exeter recovered a penalty on a By Law made by the Corporation of that city.

However, in a subsequent case of *Totterdell and Others v. Glazebey*, in the Common Pleas, 2 Wils. 266, it

was held that where the Corporation of Bath made a By Law imposing a penalty for breach of the custom against foreign trading, and gave the Masters of a Company a right to sue for it for the benefit of the poor members of the Company, the By Law was invalid in this respect, as the Masters here were to be considered as strangers. This was apparently contrary to the decision in *Ellington v. Cheney*, as cited in *Bodwick v. Fennell*, where the Master of the Guild was held to be entitled to sue for the penalty; but probably there the By Law was for the benefit of the Guild exclusively. Here the By Law was for the benefit of the whole city of Bath.

In another case a Company made a By Law and imposed a penalty—a moiety thereof to the use of the poor of the Company, and a moiety to the use of the discoverer. The Company sued in their corporate name for the penalty, and the Court of Common Pleas inclined to hold that they could do so; but as they held the By Law to be bad, no judgment was given on the point.—*The Gunmakers' Company v. Fell*, Willes. 384.

In *Piper v. Chappell*, 14 M. & W. 624, a By Law made by a chartered Company imposed a penalty to be paid to the Master and Wardens for the use of the Company, and it was held that the Master and Wardens could sue for the amount.

Whereas in *The Company of Feltmakers v. Davis*, 1 B. & P. 98, the Court decided that where the penalty was to be paid to the Master and Wardens for the use of the Company, an action could not be maintained for it by the Company.

Again, in *Groves and Others v. Colby*, 9 A. & E. 356, a By Law was made by a trading Corporation in the City of London, that every one of the livery of the Company who should be chosen Steward and should refuse to take the office, should forfeit £15

to the Master and Wardens for the time being, or to one of them, for the use of the Company. This was held by the Court of Queen's Bench to be not objectionable, on the ground of the penalty being made payable to the Master and Wardens, as they were not strangers to the Corporation. But the Court determined that the persons who had been Master and Wardens at the time of the refusal, but had ceased to hold those offices at the time when the action was brought, could not maintain an action on this By Law.

In the subsequent case of *The Tobacco Pipe Makers' Company v. Loder*, 16 Q. B. 765, the Company had, by a By Law, directed payments to be made to the Master and Wardens for the use of the Company, but that persons making default should be sued in the name of the Company; and it was held that the action was well brought in the name of the Company.

As to the
Court for the
recovery.

In the next place it is necessary to refer to the Court in which the penalty is to be recovered. This is a debt, and as such may be recovered in any Court which has jurisdiction for the recovery of debts.

But it has been admitted that in some cases, at least, the authority imposing the penalty could also prescribe in what Court it shall be recovered.

In the City of London a By Law provided that the penalty should be recovered in the Court of the City *only*; and this was held to be valid, because it was said the facts and the persons were better known there.—*Corporation of London v. Barnardiston*, 1 Lev. 16.

But this was not admitted without some difference of opinion.—See *Player v. Archer*, 2 Sid. 105, 120; *Player v. Bingham*, 3 Keb. 9; *Mounger v. Clare*, 3 Keb. 808; and *K. v. The Chamberlain of Worcester*, 2 Ld. Keny. Rep. 469.

In *Player v. Pettit*, 1 Keb. 597, the Court of King's

Bench held that an action on a By Law, made in the City of London, imposing a penalty, part whereof was to be paid to the Mayor, Aldermen, and Common Council, might be well brought in the Court of the Mayor and Aldermen.

And in *Bodwick v. Fennell*, 1 Wils. 233, the Exchequer Chamber held that an action on a By Law, made by the Corporation of Devizes, could be brought in the Court of that borough.

On the other hand, in *Wood v. The Corporation of London*, 2 Salk. 397, where a pecuniary penalty was imposed for the breach of a By Law, payable to the Mayor and Commonalty of the City, it was laid down by the Court that the penalty could not be recovered in the Court of the Mayor and Aldermen, unless the Mayor could be severed from the Aldermen.

So where a By Law is made to enforce a customary right or privilege for the benefit of the members of a Corporation against strangers, it cannot be made to be enforceable in the Court of the Corporation where the officers and jury of the Court are members of the Corporation. The interest which all have in supporting the custom vitiates the proceedings. The penalty should be made enforceable in some indifferent Court.—*Hesketh v. Braddock*, 3 Burr. 1847. And it was also determined that the objection was not avoided, by providing that the penalty should be paid over to some other party than the Corporation, as the *bias* still remained.—*Ib.* The same difficulty did not exist where the By Law referred to matters between members of the Corporation, because there the interest was equippollent, and every member of the Corporation is bound by the jurisdiction into which he has voluntarily entered.—*Ib.*

But where the interest of the individual members is exceedingly minute, the Court has refused to

admit the objection. Thus where an action on a By Law, made by the Corporation of London in reference to the trading in the City by a non-free-man, was brought in a Court of the City, the Court of Queen's Bench refused to stay the proceedings therein on the ground that the Judge, Sheriffs, and jurors, must all be interested in the question raised in the case, which was as to the extent of the custom on which the By Law was founded.—*Shaw v. Furze*, 1 L. J. R. 216.

Whether proceedings in any Court can be prevented.

Whether the body which made the By Law and required that it should be sued for in a Court named by it could prohibit the action from being brought in any other Court, is a question raised in *K. v. The Chamberlain of Worcester*, 2 Ld. Keny. 469, but not decided. The Court inclined to the opinion that it could not. Nevertheless, as this was a restriction upon the power of the Corporation who made the Law, it is difficult to see why the By Law should be bad on this ground. If it was meant to prevent the validity of the By Law from being discussed in any other Court, it would have been different.

Whether the facts of any particular case in an action upon a By Law bring it within the jurisdiction of the Court, is at least primarily a question for the Court itself to decide.

In *Anon. C.*, Comb. 68, the Court of Queen's Bench is reported to have granted a *Procedendo*, where an action had been brought on a By Law of the City of London prohibiting the practising as a Taylor without having been bound for seven years, though it was alleged that the Defendant lived out of the City, because the inferior Court could try their own jurisdiction.

It may be here noticed that in the Literary and Scientific Institutions Act, 17 & 18 Vict. cap. 112,

sect. 24, which enables the governing body to make By Laws, it is enacted that they may impose a reasonable pecuniary penalty for the breach thereof, which penalty, when accrued, may be recovered *in any local Court* of the district wherein the Defendant shall inhabit, or the Institution shall be situated, as the governing body thereof shall deem expedient.

When the action was brought in the Superior Court, the old authorities state that the proper form of action was *Debt*.—See *Chamberlain of London's Case*, 5 Co. 63; *Clark's Case*, ib. 64; 1 Roll. Abr. 367; *E. of Exeter v. Smith*, 2 Keb. 367. In Roll. Abr. it is laid down that the By Law might prescribe that the penalty should be recovered by an action of Debt; but where this was not done the penalty was recoverable in that form of action. Former pleadings.

In *The Barber Surgeons of London v. Pilson*, 2 Lev. 252, it was held that an action of *Assumpsit* would lie for the penalty. This was somewhat contrary to the ruling of Holt, C. J., in the *Mayor of York v. Towne*, 1 Ld. Raym. 502; 5 Mod. 444; but the point is not now of importance.

In regard to the pleadings in the action it will, doubtless, be held that many of the decisions of former times must now be regarded as unnecessary, yet they serve to point out oftentimes what must, in fact, be attended to in these proceedings.

In *Com. D. Pleader*, 2 W. 11, it is laid down that "a declaration for a penalty for breach of a By Law must show, a power to make it, the By Law made, and a breach."

For this, 2 *Ventr.* 243; 1 *Brown Entr.* 170, are cited; but they are only precedents of declarations and pleadings. There was no decision of the Court upon the point reported in either case.

In *The Feltmakers' Company v. Davis*, 1 B. & P.

100, a declaration stated that the Defendant, a member of a certain Company, had forfeited a penalty for breach of a certain By Law of the said Company previously made, allowed, and approved; but there was no averment of the persons who made the By Law, nor when it was made, nor under what authority, and upon special demurrer this declaration was held to be bad.

In an action on a By Law made by a trading Company in the City of London, by which a penalty was imposed upon every freeman of the Company, who, being elected on the livery, refused to accept the livery, the declaration contained no averment that the Company had a livery. This was held to be a fatal defect upon general demurrer.—*Company of Innholders v. Gledhill*, Say. 274.

In a subsequent case of *Piper v. Chappell*, 14 M. & W. 624, a By Law reciting that the Corporation might elect into the livery of the Company, imposed a penalty upon any person free of the Company who should not prepare to serve the place and wear the livery. In a declaration for breach of the By Law a Charter was recited which referred to the livery of the Company, but the declaration contained no express averment that there was a livery of the Company. Nevertheless, the Court held that the By Law was supported by the Charter, as it must be assumed that the Company had a Livery.

The Statute 23 Hen. 8, cap. 4, required the Corporation of Coopers in London to search, view, and gauge barrels and vessels, and also to mark them.

The Corporation, to ease themselves, made a By Law that the maker of a vessel should make his proof-work at the house of one of the members of the Corporation, and go thence to the Hall of the Company, and there have it marked, and that no vessel should be sent out unmarked. An action was brought on a breach of this By Law by the Corpora-

tion against a person for selling vessels unmarked. It seems to have been intended to raise the question whether the By Law was valid, as casting the necessity of bringing the vessels to be marked upon the manufacturer instead of the seller. But as the By Law prohibited the selling vessels ungauged and unmarked, and it was not averred that the vessels in question were not gauged, the Court of King's Bench held that the action failed.—*Corporation of Coopers v. Allen*, 2 Keb. 799, 830.

In *The Vintners' Company v. Passy*, 1 Burr. 239, there was a By Law that the Company should elect out of their members such as should seem most meet and convenient to them upon the livery of the Company, and if any person were so elected he should accept the same and pay a certain sum upon admission, or forfeit £25. In an action upon this By Law, with an averment of a selection of a person meet and proper, it was held that the Defendant might, upon the issue of *Nil Debet*, show that he was not a proper person to be elected, if he could do so.

Where a By Law depends upon a custom, the custom which supports the particular By Law must be set forth fully. A general allegation of a custom for the corporate body of a city to make fit remedy in respect of any bad or defective custom in anything newly arising which might require amendment, did not support a By Law imposing certain regulations as to the exercise of a trade in the city which operated as a restraint of that trade.—*Harrison v. Godman*, 1 Burr. 12.

Pleadings
in cases of
Custom.

Where a By Law prohibited persons from acting in a particular manner under a penalty, making, however, various exceptions, it was not necessary that

Allegations
in pleadings.

the Plaintiff in declaring upon the By Law should negative these exceptions.—*Shaw v. Poynter*, 2 A. & E. 312.

In regard to the allegations in the pleadings it is farther to be observed, that in cases where a By Law was presumed from long usage, it was usual, in pleading, to state that "a By Law not now extant in writing," was made.—See *K. v. Westwood*, 4 B. & C. 786.

But that it was made is a fact which, if not admitted, must be submitted to a jury, as the Court cannot presume the existence of any By Law.—*The K. v. Tomlyn*, C. t. H. 316.

It need not be alleged that a By Law is reasonable, if the Court can infer this from the By Law itself.—See 8 Co. 126 (b).

When the Homage made a By Law, it was not necessary in proceedings to recover the penalty to allege that the Homage had presented the breach.—1 Roll. Abr. 366, citing *Dyer*, 322; and according to *Scarling v. Criett*, Moo. 75, such an allegation, if made, would not have been sufficient. There should have been a positive allegation that the By Law was broken.

Estoppel.

It is proper here to notice that a tenant of a Manor, or one of the homage, though present at the making of a By Law to regulate the use of the Common, is not estopped from objecting to the validity of the By Law, if it injuriously affect him in proceedings to enforce it.—See *Lord Cromwell's Case*, *Dyer*, 322; and *Franklin v. Cromwell*, Dal. 95.

But in an action on a By Law made by a Corporation under a Charter against one of their members, it is not competent for him to raise any objection to the validity of the Charter.—*Mayor of Exeter v. Starre*, 2 Show. 159.

There is, however, no estoppel against a member which prevents him from objecting to the validity of

a By Law made by the governing body, as he is only bound to obey such By Laws as are legal.—*K. v. The College of Physicians*, 7 T. R. 287.

An action for a penalty on a By Law, made in the City of London, is, as already noticed, brought in one of the Courts of that City. If the Defendant propose to object to the validity of the By Law, he must apply to the High Court of Justice for a writ of *Habeas Corpus cum causa*, directed to the Judge of the Court wherein the proceedings are taken, requiring him to return those proceedings into the superior Court. Upon that return a motion is made by the Plaintiff to the Court to award a writ of *Procedendo*, returning the proceedings to the Court below; and upon this motion the validity of the By Law is discussed, and the Court can give their judgment. Practice in superior Courts.

If they hold the By Law to be valid, they grant the writ, and the proceedings are returned. If they hold it to be invalid, the proceedings are stayed.—See *Clark v. Denton*, 1 B. & Ad. 92.

It is competent for the Court, instead of deciding the question in these proceedings, to direct an action to be brought on the By Law in their own Court, so that, if necessary, an appeal may be had against their judgment, and the case may be decided by the ultimate Court of Appeal.

It appears that in ancient times there was some difference where proceedings were taken in the inferior Court upon a matter arising out of a custom, and upon one arising on a By Law. When the writ issued it required the By Law to be returned in the latter case, but not necessarily the custom in cases occurring in the City of London; because it seems the Court could take judicial notice of, or might When By Law to be returned.

receive an affidavit as to the custom.—*Watson v. Clarke*, Comb. 139; Carth. 75. And it appears that this rule also applied when the By Law was founded on a custom: so that the Court could therefore decide as to the validity of the By Law on motion.

The practice differed in respect of actions brought in Borough Courts elsewhere. In these cases the By Law was returned into the Court above, and upon the motion for *the Procedendo* the Court might decline to decide as to the validity of the By Law, but might require the party enforcing it to declare in their own Court upon it, and thus raise the issue as to its validity.—*Ballard v. Bennett*, 2 Burr. 775; *K. v. Chamberlain of Worcester*, S. C. 2 Ld. Ken. 469. But, as Borough Courts do not generally exist, the distinction is, perhaps, immaterial.

Even in the City of London, if the writ was not moved for until after declaration—as this declaration usually set out the custom and the By Law—both were removed.

Defence to the proceedings.

Now, it is necessary to advert to the answer on the part of the person proceeded against.

He may deny the authority to make the By Law, or that it was, in fact, duly made, published, and confirmed, according as those requisites are necessary, or that he has broken it. He may contend that it was illegal, as failing in some of the properties above set forth, and he may also avail himself of a plea of the Statute of Limitations.

Thus, where a Trading Company were empowered by Royal Charter to make By Laws for the government of the Company and its members, and accordingly made a By Law requiring every member to pay a certain sum for the use of the Company, and in default to pay double, it was held that the Statute of Limitations, 21 James 1, cap. 16, sect. 3, was a

good answer to a claim on this By Law. The Statute requires that an action of debt, grounded upon any lending or contract without specialty, shall be brought within six years. It was argued that this By Law depended on the Charter which was of record, and therefore that the debt was grounded on a record. But the Court of Queen's Bench did not admit this, relying upon the decisions that *Assumpsit* would lie for the recovery of a By Law, as showing that it lay in simple contract.—*The Tobacco Pipe Makers' Company v. Loder*, 16 Q. B. 765.

Some farther observations, with reference to the defence in the action on the By Law, will be found hereafter in the chapter on *Evidence*.

And to enable him to defend himself in proceedings by a Corporation on a By Law against a stranger, the Court of Queen's Bench granted to the Defendant an inspection of the books of the Corporation in respect of such By Law, and power to make copies of the entries therein.—*Harrison v. Williams*, 2 L. J. (Q.B.) 221.

Thus far I have treated of the penalty prescribed by the governing body which makes the By Law, recoverable only by the ordinary process of formal litigation. Statutory Provisions for recovery of the penalty.

But in modern times, when authority is given by Statute to any body to make By Laws, it has been the practice of the Legislature to give express power to that body to impose a penalty for the breach of any such By Law, but sometimes subject to a modification of or restriction upon the power of such body to impose the penalty.

At the same time the Legislature has generally provided a more summary remedy for the recovery of such penalty than would have been otherwise open to the body making the By Law.

Municipal
Corporations.

Thus *The Municipal Corporations Act*, 5 & 6 Will. 4, cap. 76, sect. 90, enabling the Town Council to make By Laws, proceeds to empower them to appoint by such By Laws such fines as they shall deem necessary for the prevention and suppression of offences; provided that no fine so to be imposed shall exceed the sum of *Five Pounds*.

Companies.

The Companies Clauses Consolidation Act, 1845, 8 & 9 Vict. cap. 16, sect. 125, empowers the Company by their By Laws to impose a penalty, not exceeding *Five Pounds*, upon their officers and servants offending against their By Laws. But sect. 126 requires that the Justices may order a part only to be paid.

Common
Lodging
Houses.

The Common Lodging Houses Acts, 9 & 10 Vict. cap. 74, sect. 34, and 14 & 15 Vict. cap. 28, sect. 10, contained powers for imposing penalties for the breaches of By Laws made under them. But these Acts have been repealed by the 38 & 39 Vict. cap. 55, and the provisions for enforcing By Laws in respect of Common Lodging Houses will now be regulated by the section of that Act, to be noticed hereafter.

Markets and
Fairs.

The Market and Fairs Clauses Act, 10 & 11 Vict. cap. 14, sect. 43, contains a similar power to that in the 5 & 6 Will. 4, cap. 76; but it requires that the By Law shall be so framed that the Justices before whom any penalty imposed thereby shall be sought to be recovered, may order the whole or part only of such penalty to be paid.

Commis-
sioners, Piers,
Harbours, and
Docks.

The Commissioners Clauses Act, 10 & 11 Vict. cap. 16, sects. 97, 98, and *The Piers, Harbours, and Docks Clauses Act*, 10 & 11 Vict. cap. 27, sect. 84, contain the like powers.

Towns' Im-
provements.

The Towns' Improvement Clauses Act, 10 & 11 Vict. cap. 34, sect. 201, also contains the same provision, limiting the penalty to 40s., and enabling the Justices to order the whole or a part to be paid, or to remit the whole of the penalty.

This enactment is incorporated with *The Towns' Police Clauses Act*, 10 & 11 Vict. cap. 89, sect. 71, and applies, therefore, to By Laws made under it in regard to Hackney Carriages and Bathing. Towns' Police.

It is farther to be remarked, that the above-mentioned Act, 10 & 11 Vict. cap. 34, sect. 128, which provides for the making of By Laws in respect of Slaughter Houses and Knackers' Yards, has a special provision enabling the Commissioners to impose pecuniary penalties on persons breaking such By Laws; Slaughter Houses.

“Provided that no such penalty exceed for any one offence the sum of *five pounds*, and in the case of continuing nuisance the sum of *ten shillings* for every day during which such nuisance shall be continued after the conviction for the first offence.”

In the case of By Laws made for such objects under 38 & 39 Vict. cap. 55, the general provisions of that Act, to be noticed hereunder, apply.

The Railways Regulation Act, 8 & 9 Vict. cap. 20, sect. 108, enabling the Company to make By Laws, enacts that any person offending against any such By Law shall forfeit for every such offence any sum not exceeding *Five Pounds*, to be imposed by the Company in such By Laws as a penalty for any such offence; and the 26 & 27 Vict. cap. 92, sect. 32, which enables Railway Companies to make By Laws in respect of their *steam vessels*, also empowers them to enforce the same by penalties, in the same manner as they may in respect to passengers, animals, and goods conveyed upon their Railway. Railways.

The Tramways Act, 1870 (33 & 34 Vict. cap. 78), in sect. 47, enacts that any By Law made under it may impose reasonable penalties for offences against the same, not exceeding 40s. for each offence, with or without further penalties for continuing offences, not Tramways.

exceeding for any continuing offence 10s. for every day during which the offence continues; but all By Laws shall be so framed as to allow in every case part only of the *maximum* penalty being ordered to be paid.

Sanitary
Laws.

The Public Health Act, 1848 (11 & 12 Vict. cap. 63), in sect. 115, enabled every Local Board, by By Law, to impose reasonable penalties upon persons who broke any By Law which they made. This Act being repealed, the following provision is contained in 38 & 39 Vict. cap. 55 (*The Public Health Act*, 1875), sect. 183: "Any Local Authority may by any By Laws made by them under this Act impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of *Five* Pounds for each offence; and in the case of a continuing offence, a further penalty not exceeding *Forty* Shillings for each day after written notice of the offence from the Local Authority.

"But all such By Laws imposing a penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty."

But there was added the following proviso:

"Nothing in the provisions of any Act incorporated herewith shall authorize the imposition or recovery, under any By Laws made in pursuance of such provisions, of any greater penalty than the penalties in this section specified."

It will be found on reference to that Act that "The Market and Fairs Clauses Act," "The Towns' Improvement Clauses Act," and "The Towns' Police Clauses Act," are incorporated therewith. Hence this proviso will take effect in reference to proceedings under any of those Acts.

Continuing
Offences.

The Court of Common Pleas, in the case of *Marshall v. Smith*, 35 L. J. 8; 28 L. J. (M.C.) 538, and L. R. 8 C. P. 416, gave a decision as to what was a

continuing offence within the meaning of 11 & 12 Vict. cap. 63, which was calculated to produce an injurious effect. The Legislature, therefore, in the 37 & 38 Vict. cap. 89, sect. 43, passed an enactment, which is now expressed in 38 & 39 Vict. cap. 55, sect. 158, thus:

"Where an Urban Authority may under this section pull down or remove any work begun or executed in contravention of any By Law, or where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of any By Law to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the By Law shall be deemed to be a *continuing offence*;

"But a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the By Law was broken."

There was much complication in reference to the summary process for enforcing By Laws made by Rural Sanitary Authorities after the 35 & 36 Vict. cap. 79. But it is not necessary to investigate this point now, inasmuch as Rural Sanitary Authorities are included in the general term of "Local Authorities," to whom the 38 & 39 Vict. cap. 55, sect. 183, above quoted, applies.

The Baths and Washhouses Act, 9 & 10 Vict. cap. 74, sect. 34, enables the Commissioners to appoint a penalty, not exceeding £5, for the breach of any By Law.

The Literary and Scientific Institutions Act, 17 & 18 Vict. cap. 112, sect. 24, enables the Governing Body to impose a reasonable penalty for breach of any By Law which they make.

The Passengers' Act Amendment Act, 1855, 18 & 19 Vict. cap. 119, sect. 82, enabled the Dock Trustees to attach a penalty, not exceeding £5, for breach of any rule or By Law made by them.

Alkali
Works.

The Alkali Works Regulation Act, 26 & 27 Vict. cap. 124, sect. 13, enables the owner of such works, who makes special rules, "to annex penalties to any violation of such rules, so that no penalty exceeds *Two Pounds* for any one offence."

Factory Acts.

The Factory Acts Extension Act, 1864, 27 & 28 Vict. cap. 48, sect. 5, authorized the occupier of the Factory to annex to any breach of the special rules a penalty not exceeding *One Pound*.

Mines Regu-
lations.

The Mines Regulation Acts, 35 & 36 Vict. cap. 76, sect. 52, and cap. 77, sect. 24, enact, that "if any person who is bound to obey the special rules established for any Mine, acts in contravention thereof, or fails to comply with any of such special rules, he shall be guilty of an offence against that Act."

And sect. 60 renders an owner, agent, or manager, liable to a penalty, not exceeding £20, and any other person liable to a penalty, not exceeding £2, for each offence against the Act, with a further penalty, not exceeding £1, after notice.

And it goes farther, for it renders "the owner, agent, and manager of such Mine guilty of a like offence, unless he proves that he has taken all reasonable means by publishing, and to the best of his power enforcing, the rules and regulations for the working of the Mine, so as to prevent such contravention and non-compliance."

Salmon
Fisheries.

The Salmon Fisheries Act (36 & 37 Vict. cap. 71, sect. 39) enables the Board of Conservators, by any By Law, to impose a penalty, not exceeding the sum of *Five Pounds*, for each offence against such By Laws; but the By Law must be so framed as to allow the Justices to order the whole or part thereof only to be paid.

The Petroleum Act, 1871 (34 & 35 Vict. cap. 105, sect. 4), enacts that where any ship or cargo is moored, landed, or otherwise dealt with, in contravention of any By Law in force under that Act in any harbour, the owner or master of such ship, or the owner of such cargo, as the case may be, shall each incur a penalty, not exceeding £50, for each day during which the contravention continues.

Petroleum.

The Explosive Substances Act, 1875 (38 & 39 Vict. cap. 17. sects. 34, 35, 36), provides with reference to By Laws made under that Act by any Harbour Authority, Railway or Canal Company, or the occupier of any wharf, as follows:—

Explosive
Substances.

“ The penalties to be annexed to any breach, or attempt to commit any breach, of any such By Laws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first, second, or other subsequent offence; that is to say, pecuniary penalties not exceeding *twenty pounds* for each offence, and *ten pounds* for each day during which the breach continues, and *forfeiture* of all or any part of the gunpowder in respect of which, or being in the carriage in respect of which, the breach of By Law has taken place.”

The Elementary Education Act, 1870 (33 & 34 Vict. cap. 75), in sect. 74, enables the School Board to make a By Law imposing a penalty for breach of any By Laws; but provides that “no penalty imposed for the breach of any By Law shall exceed such amount as, *with the costs*, will amount to *Five Shillings* for each offence.”

Elementary
Education.

It is obvious, if no penalty be fixed in reference to any of these enactments, no summary proceedings can be taken to enforce the By Law.

It is now to be considered what provisions have been made by the Legislature for the recovery of these penalties by summary proceedings.

Summary
Modes of
Recovery.

Municipal
Corporations.

The 5 & 6 Will. 4, cap. 76, sect. 91, enacts "that all the provisions thereafter contained relative to offences against that Act, punishable on summary conviction, shall be taken to apply to all offences committed in breach of any By Law or regulation made by virtue of that Act."

Then sect. 127 provides for the issuing of a summons by two Justices of the Borough, and in default of appearance the issuing of a warrant, or the hearing of the case in the absence of the offender. Sect. 128 empowers the Justices to summon witnesses. Sect. 129 provides for the payment of the penalties, and the levying of the same by distress; and sect. 130 gives the form of conviction. Sect. 131 gives an *appeal* to the Quarter Sessions against the conviction; and sect. 132 prevents the quashing of the conviction for want of form, and its removal by *Certiorari* or otherwise into the Courts at Westminster, and provides for certain informalities in the warrant.

Sanitary Laws.

The Public Health Act, 1848 (11 & 12 Vict. cap. 63), in sect. 129, contained a statement in full of the mode by which penalties for the breach of By Laws, made under the Act, might be recovered; and this statement applied to the By Laws made under the subsequent Acts incorporated therewith.

But this is now set forth in an abbreviated form in *The Public Health Act*, 1875 (38 & 39 Vict. cap. 55), in sect. 251, where it is enacted, that "all offences under this Act, and all penalties under this Act directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for" (and there is no specific mode of recovering for breaches of By Laws), "may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts" (*i.e.* 11 & 12 Vict. cap. 43, and any Act amending the same) "before a Court of Summary Jurisdiction."

The clause goes on to enact, that "the Court of Summary Jurisdiction, when hearing and determining an information or complaint under this Act, shall be constituted of two or more Justices of the Peace in Petty Sessions, sitting at a place appointed for holding Petty Sessions, or of some Magistrate or officer for the time being, empowered by law to do alone any act authorized to be done by more than one Justice of the Peace, sitting at some Court or other place appointed for the administration of justice."

Limitation
of time.

There is, however, a limitation with regard to time as to these proceedings. By sect. 252 they must be commenced within *six* months from the time when the matter of the complaint arose. By 11 & 12 Vict. cap. 63, sect. 153, the period was *three* months.

It will be remembered that, in respect of continuing offences, sect. 158 of the new Act imposes a limit of *one year*.

But the penalty cannot be enforced by any one indiscriminately. By sect. 253 it is enacted (as in 11 & 12 Vict. cap. 63, sect. 133) that "proceedings for the recovery of any penalty under that Act shall not be had or taken by any person other than by a party aggrieved, or by the Local Authority of the district in which the offence is committed, without the consent in writing of the Attorney-General."

As to the
informer or
prosecutor.

There may be a case in which a person may be specially injured or aggrieved by the breach of a By Law under this Act, and such person can proceed at his own discretion. But generally the Local Authority will be the complainant.

However, sect. 254 provides (as in the above-cited section from the 11 & 12 Vict. cap. 63) that "one-half of the penalty shall go to the informer and the remainder to the Local Authority of the district; but if the Local Authority be the informer, they shall be entitled to the whole of the penalty, and all

penalties shall be paid over to their Treasurer, to be carried to the account of the fund applicable by such authority to the general purposes of the Act."

By sect. 269 provision is made for an *appeal* to the Quarter Sessions by any person aggrieved by a conviction with the usual incidents belonging to appeals to such Sessions.

This is similar to 11 & 12 Vict. cap. 63, sect. 135. except that in the new Act there is no limit of the amount; whereas under the earlier Act the amount to justify the appeal must have exceeded *Twenty Shillings*.

Proceedings
in the County
Court.

It is, moreover, to be noticed that the Statute 24 & 25 Vict. cap. 64, sect. 24, enabled Local Boards, at their option, to take proceedings in the County Court to recover, as debts, any demand below £20, which they could recover in a *summary manner*, i.e. in proceedings before Justices. The 38 & 39 Vict. cap. 55, sect. 261, re-enacting this provision, extends the limit to £50, and renders it applicable to all Local Authorities.

Hence the penalty for breach of a By Law made under the Sanitary Acts and The Public Health Act, 1875, may be recovered in the County Court; and though no limit of time is fixed by the Statute, it has been held recently that as this is only an alternative remedy for that before the Justices, the same limitation of time, which is set out in p. 239, *ante*, prevails.—*West Ham Local Board, v. Maddams*. 33 L. T. 809. Which decision has been confirmed by the Court of Appeal of the Supreme Court of Judicature in a case of *Tottenham Local Board of Health v. Rowell*. L. R. W. Notes, July 1, 1876.

The 8 & 9 Vict. cap. 16, sect. 147, *The Companies* In the case of Companies.
Clauses Consolidation Act, 1845, provides that any penalty imposed by any By Law made in pursuance of that Act, or the special Act, or any Act incorporated therewith, the recovery whereof is not otherwise provided for, shall be recovered by summary proceedings before two Justices.

Provision is made for the summons, hearing, and conviction, in the usual manner.

By sect. 147 the amount of the penalty and costs may be levied by warrant of distress.

By sect. 148, in default of distress, the defendant may be imprisoned for a term of three months, unless the penalty and costs be sooner paid.

By sect. 149 it is pointed out how the distress is to be levied, and sect. 150 provides that the distress shall not be deemed unlawful by reason of any want of form in the proceedings.

By sect. 151 the mode of applying the penalty is pointed out, and sect. 153 prescribes that the complaint respecting the offence shall be made within *six* months next after the commission of the offence. A form of the conviction is given by the Statute, sect. 157 and Schedule. No proceeding in pursuance of that Act or the special Act is to be quashed for want of form, nor shall it be removed by *Certiorari* or otherwise into any of the superior Courts.

In *The Baths and Washhouses Act*, 9 & 10 Vict. Baths and Washhouses.
cap. 74, sect. 23, the provisions of *The Companies*
Clauses Consolidation Act, 1845, which are set out above, with respect to the making of By Laws and the provisions for the recovery of penalties, are incorporated with that Act. Hence the penalties for the breach of the By Laws made under it are recoverable by summary process; while sect. 30 gives an appeal to the Quarter Sessions.

Lands
Clauses Con-
solidation Act.

The Lands Clauses Consolidation Act, 8 & 9 Vict. cap. 18, sects. 136—147, with reference to every penalty or forfeiture imposed thereby, or the special Act, or by any By Law made in pursuance thereof, the recovery of which is not otherwise provided for, contains similar enactments. But it is not quite clear what By Laws are thereby referred to.

Railways.

The Railways Clauses Consolidation Act, 1845, 8 & 9 Vict. cap. 20, in sects. 145—156, contains identical provisions; and these are extended to By Laws relating to their Steam-vessels by 26 & 27 Vict. cap. 92, sect. 32.

Appeal.

An appeal to the Quarter Sessions is allowed in each of these Statutes against the conviction, and the Court are empowered to make such order as they shall think reasonable, by mitigating the penalty, confirming or quashing the adjudication, ordering return of money paid, and providing for the costs of the parties.

Police
Clauses.

By sect. 73 of the 10 & 11 Vict. cap. 89, The Police Clauses Consolidation Act, 1845, the clauses of The Railways Clauses Consolidation Act, 1845, with respect to the recovery of penalties are incorporated therein.

Passengers'
Act.

By The Passengers' Act Amendment Act, 1855, 18 and 19 Vict. cap. 119, sects. 81, 85, penalties for breach of By Laws made under it, are to be sued for by the Dock Trustees, before two Justices, in like manner.

Tramways.

By The Tramways Act, 33 & 34 Vict. cap. 78, sect. 56, penalties are to be recovered before two Justices, in manner provided by the 11 & 12 Vict. cap. 43.

Penalties for the breach of By Laws under *The Petroleum Act*, 1871 (34 & 35 Vict. cap. 105), are by sect. 15 recoverable in manner provided by the Summary Jurisdiction Acts. Petroleum.

The provision as to *Explosive Substances* is contained in 38 & 39 Vict. cap. 17, sects. 91—96, which enable offences under the Act to be recovered, and matters liable to forfeiture to be forfeited, on Indictment, or before a Court of Summary Jurisdiction in the manner directed by the Summary Jurisdiction Acts. Explosive Substances.

An *appeal* to the Quarter Sessions against the conviction is given.

By 26 & 27 Vict. cap. 124 (*The Alkali Act*, 1863), sect. 18, penalties in respect of any offence against a special Rule may be recovered summarily before two or more Justices in manner directed by 11 & 12 Vict. cap. 43, or any Act amending the same. Alkali Act.

The 27 & 28 Vict. cap. 48, sect. 7 (*The Factory Acts Extension Act*, 1864), provides that all penalties for the breach of a Special Rule should be recoverable, and applied as penalties “under the Factory Acts.” Factories.

And *The Mines Regulation Acts*, 35 & 36 Vict. cap. 76, sect. 62, and cap. 77, sect. 33, contain similar provisions. Mines.

In regard to *The Salmon Fishery Acts*, it is enacted, by 36 & 37 Vict. cap. 71, that all penalties imposed by any By Law made in pursuance thereof may be recovered within *six months* after the commission of the offence before two Justices in the manner directed by the 11 & 12 Vict. cap. 43, or any Act amending the same. Salmon Fishery.

Sect. 62 of the Act provides that “all penalties recovered under the said Acts on the complaint

of a Board of Conservators, or of any officer of, or a person authorized by, a Board of Conservators, shall be paid to the Board of Conservators for the district, to be applied by them for the purposes of 'The Salmon Fishery Acts, 1861 to 1873' (unless the Court for some special reason otherwise order)."

Elementary
Education.

The Elementary Education Act, 33 & 34 Vict. cap. 75, provides that any proceeding to enforce any By Law may be taken, and any penalty for the breach of the By Law may be recovered *in a summary manner*, and sect. 111 refers to the 11 & 12 Vict. cap. 43, for the manner.

But very precise and detailed provisions relative thereto are contained in 36 & 37 Vict. cap. 86, as follows:—

Sect. 23. All offences and penalties under any By Law under the principal Act (*i.e.* 33 & 34 Vict. cap. 75), which may be recovered on summary conviction, may be prosecuted and recovered in manner provided by the *Summary Jurisdiction Acts*. The Court of Summary Jurisdiction, when hearing and determining an information or complaint, shall be constituted either of two or more Justices of the Peace in Petty Sessions sitting at a place appointed for holding Petty Sessions, or of some magistrate or officer sitting alone or with others at some Court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any Act authorized to be done by more than one Justice of the Peace.

Sect. 24. With respect to proceedings before a Court of Summary Jurisdiction for offences and penalties under the principal Act, or this Act, or any By Law under the principal Act, the following provisions shall have effect:—

- "(1.) The description of the offence in the words of By Law, or as near thereto as may be, shall be sufficient in law:
- "(2.) Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in the By Law, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant:
- "(3.) In any proceeding for an offence under a By Law the

Court may, instead of inflicting a penalty, make an order directing that the child shall attend school, and that if he fails so to do, the person on whom such order is made shall pay a penalty not exceeding the penalty to which he is liable for failing to comply with the By Law:

- “(4.) Any Justice may require by summons any parent or employer of a child, required by a By Law to attend school, to produce the child before a Court of Summary Jurisdiction, and any person failing, without reasonable excuse to the satisfaction of the Court, to comply with such summons shall be liable to a penalty not exceeding *twenty shillings*:
- “(5.) A certificate, purporting to be under the hand of the principal teacher of a public elementary school, stating that a child is or is not attending such school, or stating the particulars of the attendance of a child at such school, or stating that a child has been certified by one of Her Majesty's inspectors to have reached a particular standard of education, shall be evidence of the facts stated in such certificate:
- “(6.) Where a child is apparently of the age alleged for the purposes of the proceeding, it shall lie on the defendant to prove that the child is not of such age:
- “(7.) If a child is attending an elementary school which is not a public elementary school, it shall lie on the defendant to show that the school is efficient; and the Court, in considering whether any elementary school is efficient, shall have regard to the age of the child, and to the standard of education corresponding to such age prescribed by the minutes of the Education Department for the time being in force with respect to the Parliamentary grant:
- “(8.) Where a School Board are, by reason of the default of the managers or proprietor of an elementary school, unable to ascertain whether a child who is resident within the district of such School Board, and attends such school in conformity with a By Law made by such School Board, it shall lie on the defendant to show that the child has attended school in conformity with the By Law:
- “(9.) Any person may appear by any member of his family, or any other person authorized by him in his behalf.”

In the case of By Laws made under the *Infants' Life Protection Act*, 1872 (35 & 36 Vict. cap. 38) no specific remedy is provided for a breach of such Laws. But sect. 3 renders “every person who receives or retains any infant in contravention to the provisions

Infant Life
Protection.

of that Act guilty of an offence against this Act ;” and by sect. 9 “every person guilty of an offence under it is liable to imprisonment for six months with or without hard labour, or to a penalty not exceeding £5, and in addition to have his name and house struck off the register.”

Offences are to be prosecuted according to the Summary Jurisdiction Acts.

Limitation
of time for
prosecutions.

It is to be remembered in regard to all these proceedings for penalties on breach of By Laws, that the 11 & 12 Vict. cap. 43, sect. 11, imposes a limitation of six months upon the prosecution in all cases where the Statute referred to does not contain any special limitation.

It will be seen above (p. 239), that there is a special provision in respect of the Sanitary Act, 1875; and in the Passengers’ Act Amendment Act, 1855, 18 & 19 Vict. cap. 119, sect. 94, a term of twelve months is specified as a limitation upon the prosecutions.

Competency
of interested
Justices.

In reference to the Justices called upon to decide, I have to refer to the 5 & 6 Vict. cap. 57, sect. 15, which renders them competent to act in cases from Unions, though they may be *ex-officio* Guardians; to the 30 & 31 Vict. cap. 115, which removes the incompetency arising out of liability to rates; and to the 38 & 39 Vict. cap. 55, sect. 258, which has the same provision, and also removes the incompetency arising out of their position as members of the Local Board.

Appeals.

I have noticed above the several cases where the Statutes have given an appeal to the Quarter Sessions against summary convictions for breaches of By Laws.

Certiorari.

I have now to call attention to the provision in most of these Statutes which prohibits the removal of the

conviction by *Certiorari*, as I must notice two cases on that provision.

The first is that of *The Q. v. Wood*, 5 E. & B. 49. There a Justice convicted a Defendant for breach of a By Law made by a Local Board, on the ground that he was concluded by the allowance of the same by the Secretary of State, and the Court of Queen's Bench authorized the removal of the conviction by writ of *Certiorari*, though such writ is taken away by the 11 & 12 Vict. cap. 63, sect. 127, because the Justice had improperly declined jurisdiction, and as the Court held the By Law to be void, they quashed the conviction.

The other case arose on the above-cited Statute, 5 & 6 Will. 4, cap. 76, sect. 132. There a Recorder gave judgment on a conviction for breach of a By Law, but both parties consented to his stating a case for the opinion of the Court of Queen's Bench, and it was held that by reason of such consent that Court could hear and decide the question; and after argument, the conviction was quashed.—*Reg. v. Dickenson*, 7 E. & B. 831.

But in the recent case of *Reg. v. Chantrell*, L. R. 10 Q. B. 587, the subject of the writ of *Certiorari* has been deliberately considered, and the Court there held that where it is taken away by Statute, it is not available for the reference of cases from the Sessions.

Whether an appeal be open to the parties or not, it is now the common practice for cases involving the consideration of the validity or invalidity of By Laws, or the question as to the infringement of any By Law, to be brought before the superior Courts for judgment, under the provisions of the Statute 20 & 21 Vict. cap. 43. Special cases.

Accordingly *The Public Health Act*, 1875, 38 & 39 Vict. cap. 55, which, in sect. 262, prevents the removal of any conviction under that Act by *Certiorari* or other writ, or other process whatsoever, into any of the superior Courts, expressly provides "that nothing in that Section shall prevent the removal of any case stated for the opinion of a superior Court, or of any conviction to which such special case relates."

And sect. 269, which gives an appeal to the Quarter Sessions, enacts in (7) that "the decision of the Court of Appeal shall be binding on all parties: Provided that the Court of Appeal may, if such Court thinks fit, state the facts specially for the determination of a superior Court."

Such cases are now, therefore, removable to the Division of the High Court of Justice for the hearing of Appeals from inferior jurisdictions.

10. By In-
junction from
the High Court
of Justice.

The Tenth Mode of enforcing a By Law is by application to the High Court of Justice for *an injunction* to stop the acts of parties who are proceeding in violation of a By Law.

The governing body may consider that the pecuniary penalty will not be sufficient to stop a proceeding which, being in violation of a By Law, may produce very great damage. In this case the aid of the Superior Court may be sought, and if the By Law be good, and the violation be established, and if the mischief resulting from the violation is shown to be serious, that aid will not be sought in vain.

But the complaining party must not, by its own conduct, have precluded itself from obtaining the aid of that Court.

A Local Board made a By Law requiring notice

of an intended new building, with plans thereof, and of its position with reference to adjoining buildings and the level of the street. Plans were accordingly sent to them, which showed not only the new building as proposed, but its position in the street. These plans were approved on behalf of the Local Board, and the new building was commenced. The Local Board then sought to restrict the line of the building with reference to that of the adjoining buildings. But *Vice-Chancellor Stuart* held that they could not do so, as they were concluded by the approval which they had given to the plans upon which the position of the building with reference to the street had been shown.—*Slee v. Mayor of Bradford*, 8 L. J. (N.S.), 491.

The mode of enforcing a By Law in a Court of Law hitherto considered is by a civil action, or by proceedings summarily where the By Law is authorized and a penalty is imposed by Statute. I have, however, to notice that though the violation or disobedience of any public Statute where no penalty is provided is, nevertheless, punishable as a misdemeanour at the Common Law, and may be the subject of a prosecution accordingly, yet disobedience of a By Law is not such a criminal offence as to be the subject of a Common Law Prosecution.

By Law not
the subject of
an indictment.

In *R. v. Sharples*, 4 T. R. 777, where an indictment was preferred against a person for following a trade in a Borough, contrary to the laws, customs, and constitutions of the Borough, and was demurred to, the Court of Queen's Bench gave judgment for the Defendant, because this was not an offence contrary to the general laws of the land.

Thus far I have been considering how the governing body may enforce their own By Law. But

By Law en-
forced by a

person deriving benefit from it. sometimes a By Law confers an advantage to a party, and inquiry is made how he is to enforce it.

This is illustrated by the case of *Hopkins v. The Mayor of Swansea*, 4 Mee. & W. 621, and 8 Mee. & W. 901.

There a member of a Municipal Corporation was to receive an annual sum by virtue of a rule and ordinance made by the Corporation long before the passing of the Municipal Corporations Act, to be paid by the Attorneys of the Borough out of the rents of certain lands belonging to the Corporation. By the 5 & 6 Will. 4, cap. 76, these attorneys were abolished. The second section of that Act provides that every person who would have been entitled to any interest or benefit if that Act had not been passed should have and enjoy the same as fully and effectually as he, by any By Law or custom in force at the passing of the Act, could have had and enjoyed.

It was held in the Court of Exchequer that the member so entitled could maintain an action of Debt against the Corporation after the passing of that Act; and by the Court of Exchequer Chamber that, even assuming that such an action would not lie at Common Law, which might be doubtful, it was at least maintainable under the provision above cited from the Act.

CHAPTER VIII.

OF EVIDENCE.

IN proceedings to enforce a By Law it is necessary to prove the existence of the Body making it, the authority for it, the making, the confirmation and publication, and the breach by the party complained of.

The actual amount of proof required in any particular case depends upon the questions put in issue by the parties.

First, as to *the existence* of the Body making the By Law. This is generally a matter of such notoriety as not to admit of question. But, nevertheless, it may be put in issue; and if so, must be proved by such evidence as the nature of the case will supply. (1.) The existence of the authority making the By Law.

It will be well to remember, however, that some persons are estopped from raising this question, as a member of a Corporation cannot dispute the legal existence of that Corporation in an action on a By Law.—*Mayor of Exeter v. Starr*, 2 Show. 159.

But where there is no estoppel, the Defendant may require the Plaintiff or Prosecutor to prove the legal constitution or existence of the body that assumed to make the By Law. Sometimes the proof of this will be supplied by the Acts of the Legislature, as in the case of Municipal Corporations; sometimes it may be necessary to produce a Charter.

In the case of Local Boards the production of the Statutes confirming their constitution, or of the

'Gazette' containing the notification of their constitution will suffice.

In regard to any other body parol evidence from some officer or member of the body will generally supply the means of proving its existence.

(2.) The authority for making the By Law.

The *second* point is the proof of *the authority* which empowers the governing body to make the By Law. This depends upon the ground whereon that authority is based.

If the authority is implied from the constitution of the body, no proof is required, because it will be the duty of the Court, as a matter of law, to infer the existence of the authority.

If it depend upon the terms of a Charter, the production of the Charter will prove it.

If it depend upon a Statute, that Statute, if a public one, must be referred to; if it be a local or private Act, there must be the ordinary proof of such an Act.

If it depend upon Custom, that custom must be proved by parol testimony, or by ancient records and other instruments, subject to the rules affecting the admissibility of such records and instruments.

(3.) The making of the By Law

The *third* point is as to *the making* of the By Law. This is a fact to be proved as any other fact.

Hence it might be competent for a witness present at the making of a By Law to depose to that fact; but if it were proved or admitted that the By Law was committed to writing, the production of that writing would be required as the best evidence.

If, indeed, the By Law has been entered upon the records of the Corporate body which made it, these records need not be produced; but a copy, certified to be correct by an officer having the legal custody of

the records, is, I presume, admissible in evidence as proof of the making of such By Law.

The *Railway Clauses Consolidation Act*, 8 & 9 Vict. cap. 20, which enables Railway Companies to procure their By Laws to be confirmed by the Railway Commissioners, does not contain any provision rendering a copy of the By Laws sufficient proof thereof; but the Court of Common Pleas, in *Motteram v. The Eastern Counties Railway*, 7 C. B. (N.S.) 58, held that By Laws so made were documents of such a public nature that a certified copy of one under the hand of the Clerk of the Company was admissible in proof thereof, if not by the rule of the Common Law, at least under 14 & 15 Vict. cap. 14. The previous Act, 8 & 9 Vict. cap. 113, set forth hereafter, was not applicable, as the Railway Act does not contain any provision on the subject.

Where there is no evidence of the actual making of the By Law, nor any written record of its enactment, still the fact may be established by the evidence of long-continued and ancient usage. The Court, or a jury, may presume that a By Law was made to support the usage, although the record is not forthcoming. See *The case of Corporations*, 4 Co. 78; *The K. v. Head*, cited 6 Bro. P. C. 517, and reported in 3 Burr. 2515; *K. v. Castle*, Andr. 124; *Perkins v. The Company of Cutlers in Hallamshire*, 2 Selw. N. P. 1162; *Gape v. Hallam*, 3 T. R. 388 (n.); *Q. v. Powell*, 3 E. & B. 377, where a usage of 400 years was shown.

When questions arose upon the qualifications of members of Corporations constituted by Charter, it was attempted to establish those qualifications when varying from the Charter by usage for a long period of years subsequent to the Charter. But it was held in the House of Lords that no usage, however long, subsequent to a Charter could establish a right in-

consistent with that Charter; and if reliance were placed upon an immemorial usage commencing prior to the Charter, the acceptance of the Charter determined that prescription.—*Powell v. R.* 3 Bro. P. C. 428.

Thereupon the practice arose of alleging a lost By Law, which was proved by long usage, to control or explain the Charter.

Statutory
Provisions.

The recent Statutes which empower particular bodies to make By Laws generally contain provisions as to the evidence of the making of the By Law.

Thus in *The Joint Stock Companies Act*, 7 & 8 Vict. cap. 110 (since repealed), it was enacted in sect. 48, that: "In all actions, suits, and other proceedings for the enforcement of such By Laws, or other penalties for the breach thereof, the production of a written or printed copy of the By Laws of the Company having the seal of office of the Registrar of Joint Stock Companies affixed thereto shall be sufficient evidence of such By Laws."

And in *The Companies Clauses Act*, 8 & 9 Vict. cap. 16, sect. 127, it is enacted that: "The production of a written or printed copy of the By Laws of the Company, having the Common Seal of the Company affixed thereto, shall be sufficient evidence of such By Laws in all cases of prosecution under the same."

Other special Statutory enactments will be noticed a little farther on, but it is necessary here to set forth the 8 & 9 Vict. cap. 113. That Statute, reciting that "Whereas it is provided by many Statutes that various Certificates, *By Laws*," and other matters, "shall be receivable in evidence of certain particulars in Courts of Justice, provided they be authenticated in the manner prescribed by such

Statutes, and that the beneficial effect of these provisions has been found by experience to be greatly diminished by the difficulty of proving that the documents are genuine, and that it is expedient to facilitate the admission in evidence of such and the like documents," enacted

"That whenever by any Act then in force, or thereafter to be in force, any certified copy of any document or By Law shall be receivable in evidence of any particular in any Court of Justice, or before any legal tribunal, or in any judicial proceeding, the same shall be admitted in evidence, provided it *purport* to be sealed or impressed with a stamp, or sealed and signed, or signed alone, as required, or impressed with a stamp and signed, as directed by the Act made, or thereafter to be made, without any proof of the seal or stamp where a seal is necessary, or of the signature, or of the official character of the person appearing to have signed the same, without any further proof in every case in which the original record could have been received in evidence."

Sect. 4 renders persons forging the seal, stamp, or signature of any such copy, guilty of felony.

This enactment, however, only relates to the proof of the *making* of the By Law.

Where the By Law depends upon a custom, the making of the law under it must generally be proved, as in the case above referred to, by the testimony of witnesses, or of ancient records which prove the usage from which the custom is presumed. The usage proves the custom which authorized the making of the By Law, and at the same time will generally prove that the By Law was made.

Proof in cases
of Customs.

But it may be noticed that the customs of the City of London, upon which so many By Laws of that City depend, can only be proved by the attend-

ance in Court of the Recorder of the City, who proves the custom by his oral testimony.—*The Leathersellers' Company v. Beecon*, Sir T. Jo. 149.

(4.) Proof of
the Confirmation.

The *fourth* matter to be proved in cases of many By Laws is their *Confirmation*. The requisite proof depends upon the nature of the confirmation. On reference to the Chapter on this subject above it will be seen that it is only in modern times that confirmation has been necessary to support proceedings for enforcing the By Law.

Hence, as such confirmation depends upon Statutory requisition, so the proof is generally provided by the Statute. This also will be shown a little farther on.

But it may be noticed that the *Common Lodging Houses Act*, 14 & 15 Vict. cap. 28, sect. 10, provided that "a copy of the said Regulations, purporting to be signed by the *Secretary of State*, and also to be signed by the Local Authority (or to be sealed with the Seal of the same, in case it have a Seal), shall be receivable in evidence of such Regulations, and of the duly making and confirming thereof."

That Act, indeed, is now repealed, but I presume that this provision is still in force in regard to Regulations framed under it.

(5.) Proof
of the Publication.

The *fifth* matter to be proved is the *publication* of the By Law.

In cases of ancient By Laws, the publication is a fact only to be proved by the usage. If the making of the By Law is established thereby, the publication is almost necessarily presumed from this usage.

In the case of recent By Laws, where no specific provision is made as to the publication, that fact

must be proved by such evidence as the case will supply.

It is common to have By Laws, when made, printed, and copies delivered to the persons affected by them.

In Manor Courts, and similar assemblies, an entry of the publication of the By Law by proclamation is made on the records of the Court, and the production of those records, or probably copies of them, will prove the publication.

But here also it is further to be observed that the Statutes which provide for the publication of By Laws usually provide for the proof of that publication. Statutory Provisions.

Thus *The Railway Clauses Consolidation Act*, 8 & 9 Vict. cap. 20, sect. 111, enacts that "for proof of the publication of any such By Laws (i.e. such as may be made by a *Railway Company*) it shall be sufficient to prove that a printed paper or painted board containing a copy of such By Laws was affixed and continued in the manner by that Act directed, and in case of its being afterwards displaced or damaged, then that such paper or board was replaced as soon as conveniently may be." As to Railways.

The manner of the publication is shown above, p. 188, where it is required that the By Law is to be affixed on the front of every Wharf or Station belonging to the Company, so as to give notice thereof to the parties interested therein or affected thereby.

In a prosecution for a breach of a By Law prohibiting a passenger getting into or out of a train in motion, it was held to be sufficient to prove that the By Law was published at the stations where the passenger entered the train and quitted it, without proof that there was a publication at every station on the line, though one Judge (Williams, J.) dis-

sented.—*Motteram v. Eastern Counties Railway Company*, 7 C. B. (N.S.) 58.

As to Markets and Fairs. *The Market and Fairs Clauses Act*, 1847, 10 & 11 Vict. cap. 14, in sect. 49, enacts that—

“The production of a written or printed copy of the By Laws requiring confirmation of the Court of Quarter Session, authenticated by the signature of the Judge, or of the Chairman of the Court who shall have approved of the same and requiring approval under the *hand of one of Her Majesty's principal Secretaries of State*, and a written or printed copy of the By Laws not requiring such confirmation or approval, authenticated by the Common Seal of the undertakers if they be a body corporate, or under the hands of the undertakers if not incorporated, or any two of them, shall be evidence of the *existence and making* of such By Laws in all cases of prosecution under the same, without proof of the signature of such Judge, Chairman, or Sheriff, or *such Secretary of State*, or the Common Seal or signature of the undertakers;

“And with respect to the proof of the *publication* of any such By Laws, it shall be sufficient to prove that a painted board containing a copy thereof was put up and continued in manner by this Act directed, and in case of its afterwards being displaced or damaged, that such board was replaced or restored as soon as conveniently might be, unless proof be adduced by the party complained against that such painted board did not contain a copy of such By Laws, or was not duly put up or continued as directed by this Act.”

A like provision is contained in *The Harbour, Docks, and Piers Clauses Act*, 10 & 11 Vict. cap. 27, sect. 90; in the *Towns Improvement Clauses Act*, 10 & 11 Vict. cap. 34, sect. 207; and is incorporated with the *Towns Police Clauses Act*, 10 & 11 Vict. cap. 89, sect. 71.

As to Emigrant Vessels. *The Passengers Act Amendment Act*, 1855, 18 & 19 Vict. cap. 119, sect. 82, having required the By Laws made by the Dock Trustees under that Act to be published in *The London Gazette*, enacts that “such Publication shall for all purposes be deemed *conclusive evidence* of such rules and By Laws, and of the approval thereof by the Secretary of State.”

As to the River Thames. By the 27 & 28 Vict. cap. 113, sect. 33, it is enacted

that a copy of any By Law made by the *Conservators of the River Thames* after December 31, 1864, and allowed, *purporting* to be printed by direction of the Conservators, and being authenticated by their Common Seal, and the signature of their Secretary, shall for all purposes and to all intents be *conclusive evidence* of such By Law, and of the due *making* and *allowance* thereof without proof of such seal or signature.

The 36 & 37 Vict. cap. 33, sect. 2, enacts that—

By Laws of
Municipal
Corporations.

“The production of a written or printed copy of any By Laws made by the Council of a Borough, either under *The Municipal Corporations Act* of the 5 & 6 Will. 4. cap. 76, or under any present or future general or local Act of Parliament, authenticated by the Common Seal of the Borough, shall be evidence, until the contrary is proved, of the due *making* and *existence* of such By Laws, and, if so stated in such copy, of the same By Laws having been approved and confirmed by the authority whose *approval* or *confirmation* is or shall be required to the making or enforcing of such By Laws in all legal proceedings, without further proof of the making of such By Laws, or of such approval or confirmation, or of the said Common Seal.”

Here there is no provision as to the *publication*, and consequently there must be special proof of this fact in reference to the By Laws of Municipal Corporations, unless the term *existence* covers the publication.

Where only a printed copy of the By Laws was laid before the Sessions, the Court of Queen's Bench held this to be insufficient proof.—*Drew v. Harlow*, 39 J. P. 421.

The 27 & 28 Vict. cap. 48, sect. 5, provides that a printed copy of the *Special Rules* for the time being in force in any Factory, certified under the hand of the Inspector for the time being having jurisdiction

Proof of
Special Rules
in Factories.

over such factory, shall be evidence of such Rules, and of their having been approved by the Secretary of State, and it shall be the duty of the above-mentioned Inspector to certify copies of Special Rules when required.

In Mines.

In reference to *Special Rules* made under the Mines Regulation Acts, the 35 & 36 Vict. cap. 76, sect. 59, and cap. 77, sect. 30, enact "that an Inspector under these Acts shall when required certify a copy which is shown to his satisfaction to be a true copy of any *Special Rules* which for the time being are established in any mines, and a copy so certified shall be evidence (but not to the exclusion of any other proof) of such Special Rules, and of the fact that they are duly established under those Acts, and have been signed by the Inspector."

Proof under
the Salmon
Fishery Act.

And in the 36 & 37 Vict. cap. 71, which relates to the Salmon Fishery, sect. 45 provides that—

"The production of a written or printed copy of any By Law purporting to have been confirmed, authenticated by the Common Seal of the Board (of Conservators), shall be conclusive evidence of the *existence* and due *making* of such By Law in all legal proceedings, and the production of a copy of any newspaper or newspapers containing the notice of the *making* of any such By Laws, shall be taken and received in all legal proceedings as evidence that all things required by this Act for the *making* and *publication* of the By Law therein advertised have been duly done, performed, and published."

Proof of By
Laws under
Public Health
Act.

Lastly, by 38 & 39 Vict. cap. 55, sect. 186, provision is made for By Laws under the Sanitary Act of 1875 thus—

"A copy of any By Laws made under this Act by a *Local Authority* (not being the Council of a Borough), signed and certified by the clerk of such authority to be a true copy and to have been duly confirmed, shall be evidence until the contrary is proved in all legal proceedings of the due *making*, *confirmation*, and *existence* of such By Laws without further or other proof."

Here the word *existence* appears to cover the publication, though it is to be regretted that this latter word was not used.

The sixth and *last* matter to be proved is the *breach* or violation of the By Law. (6.) Proof of the breach of the By Law.

This must generally depend upon the facts of the case, and it is not possible to provide as to what proof will be requisite. The decisions which I have collected together as illustrating the construction or interpretation of By Laws may, however, render some assistance under this head.

But I may here insert the following cases.

A Butchers' Company passed a By Law prohibiting the sale of meat on Sunday under a penalty of 20s., and proceeded to enact that if any offender should deny, refuse, or *neglect* to pay the penalty, he should be liable to an action of debt. It was held by three Judges against one that in an action upon this By Law it was not necessary to show that the penalty had been demanded before the action was brought.—*The Butchers' Company v. Bullock*, 3 B. & P. 434.

A By Law made by the Local Board of a seaside district prohibited drivers of carriages from *plying for hire* in any of the streets or places in the district except on one of the stands. A licensed driver was driving a carriage on the beach of the sea within the district; he got off his carriage, spoke to some persons and took them up, having passed a stand. It was held that he was rightly convicted of a breach of the By Law by *plying for hire* within the district.—*The Blackpool Local Board of Health v. Bennett*, 4 H. & C. 127, 28 L. J. M. C. 203.

A Corporation made a By Law that if any inhabitant of the town should be duly elected to the office of Bailiff and should refuse to take it upon him, he

should forfeit and pay to the Corporation £20. A certain inhabitant having been appointed refused to take the office, and an action was brought against him for the penalty. He pleaded that by the 13 Car. 2, st. 2, cap. 2, sect. 12, no person should be chosen into any corporate office who had not in the previous year received the sacrament of the Lord's Supper according to the usages of the Church of England; that he was a Protestant but had not received the sacrament, and therefore was not capable of being elected to this office. The Court of King's Bench held this to be a sufficient answer, that he was not capable of being elected, and therefore not having been duly elected he had not committed any breach of the By Law by not taking upon himself the office.—*Mayor of Guildford v. Clarke*, 2 Ventr. 247.

A By Law may be made by the Council of a Borough under 5 & 6 Will. 4, cap. 76, sect. 51, to fix the fine to be paid by any person who being elected to a corporate office does not accept it. In a prosecution for a breach of a By Law so made, though there need not be express or actual evidence of qualification of the person elected, there must be some evidence, so that if in fact he be not qualified he cannot be convicted.—*Reg. v. Richmond*, 11 Week. R. 65.

A Municipal Corporation acting under 5 & 6 Will. 4, cap. 76, sect. 90, made a By Law which prohibited any person from projecting over or upon any public footway any awning which should impede the passengers, or hanging out goods for sale or exhibition so as to project over any public footway and obstruct the passengers, or from causing or committing any other obstruction, nuisance, or annoyance, in any of the streets.

A Tobacconist being owner of a private residence which had an area protected by iron railings set into

a stone coping abutting on the footway, built a shop projecting in front of the walls to the foot pavement covering the area, but the plinths of the pilasters supporting the shop-front extended one inch and a half over the footway. The Court of Queen's Bench held that this was not a breach of the By Law.—*The Q. v. Dickenson*, 7 E. & B. 831.

Where a By Law prevented a man from carrying on the trade of Tailor in a town, and in an action for a breach of this By Law the defendant pleaded that he was in the service of a man and only made garments for his master and his family, it appears to have been held that this was a good answer.—*The Clothworkers of Ipswich C.*, Godb. 252; *Tailors of Ipswich C.*, 11 Co. 53; *The Tailors of Ipswich v. Sherring*, 2 Roll. R. 4.

The 29 & 30 Vict. cap. 122, providing for the management of the Metropolitan Commons, provides for a scheme in which By Laws may be made for the prevention of nuisances on such commons. But by sect. 15 no estate, interest, or right of a profitable or beneficial nature is to be taken away, except with the consent of the person entitled, without compensation.

A scheme duly confirmed saved to all persons all these interests. A By Law made in pursuance of the scheme prohibited the erecting on the common, unless with the consent of the authority in writing, any posts, &c., or any building of any kind whatever.

A sign-post belonging to an adjoining public-house had stood on the common for many years prior to the confirmation of the scheme, and some time after it was blown down.

It was held that the owner of the public-house was entitled to erect another sign-post in its place, as the right to have the sign-post in this spot was a beneficial right within the meaning of the Act, and

therefore the By Law did not apply.—*Hoare v. The Metropolitan Board of Works*, 43 L. J. M. C. 65.

A Local Board made a By Law under 21 & 22 Vict. cap. 98, sect. 34, by which they directed "that every building to be erected and used as a dwelling-house shall have an open space exclusively belonging thereto, to the extent at the least of one-third of the entire area of the ground on which the said dwelling-house shall stand, and which shall belong thereto."

The proprietor of a house which had been erected before the constitution of the district, and was used as an hotel, having a yard with coach-house and stables in the rear, to make an addition to the hotel pulled down the coach-house and stables below the ground-floor, and erected on the same site a building three stories high. The access above was by a staircase in the old building, through a passage into the new.

In an information for breach of this By Law, the Justices found that the building in the yard being a new building, built up to and adjoining the old building, must be considered with the old building as one house, or that both must be considered as two erections, and that both must be considered in reckoning the ground upon which the building stood. They therefore held that the By Law was broken.

The Court of Exchequer, however, held that this was not a new dwelling-house, but merely an addition to the old dwelling-house, and therefore the conviction could not be supported.

Bramwell, B., also observed that the Justices had not found that this was a new dwelling-house, which was essential to the validity of the conviction.—*Shiel v. The Mayor of Sunderland*, 3 H. & C. 796.

A By Law of a Railway Company ran thus: "Each passenger booking his place will be furnished with a ticket, which he is to show and deliver up when required to the Guard," and "each passenger not producing or delivering up his ticket when required" was subjected to a penalty. It was held in the Court of Queen's Bench that the holder of an annual ticket was bound to produce his ticket to the Railway officer, as much as an ordinary passenger.

The ticket was given with a memorandum to produce the same when required, or in default to pay the ordinary fare, and the Court held that this contract did not supersede the By Law.—*Woodard v. Eastern Railway Company*, 30 L. J. M. C. 196.

A Railway Company made a By Law in these terms: "Every passenger shall pay his fare previously to entering any of the carriages of the Company, or of any other Company using the railway. On payment of the fare, the passenger will be furnished with a ticket specifying the class of carriages and distance for which the fare has been paid, which ticket the passenger shall show on demand before leaving the carriage. Any passenger who shall enter a carriage without having paid his fare, or who shall refuse to show or deliver his ticket when required to do so, shall be liable to a penalty not exceeding 40s."

A person intending to go to D. on this Railway, applied for and obtained a ticket for N., beyond D., and paid his fare to N. The fare to N., for certain reasons, was less than the fare to D., and when the train arrived at D., he there alighted, delivered his ticket to the Collector there, and refused to pay the extra fare to N. It was held that he had not committed any breach of the By Law.—*Q. v. Frere*, 34 L. J. M. C. 68.

In *Dearden, App., Townsend, Resp.*, L. R. 1 Q. B. 10, it appeared that a Railway Company made a similar

By Law, with this addition, that a person not producing a ticket was to be required to pay the fare from the place whence the train originally started, or forfeit a sum.

A person who had taken a ticket from one place to another, proceeded farther, and tendered the difference of fare at the end of his journey, but could not produce a ticket for the whole distance. It was found that he had no intention to defraud. It was held that he had not broken the By Law.

Again, in *Jennings v. The Great Northern Railway*, L. R. 1 Q. B. 7, there was a similar By Law, and this case occurred: A person took tickets for himself, his servants and horses, by a particular train, which was afterwards divided into two. He travelled in the first train, taking all the tickets with him. On the starting of the second train, the servants were required to produce their tickets, and not being able to produce them, were left. The master sued the Company for not carrying his servants, and recovered, it being held that there was no breach of the By Law in this case.

But where a Tramway Company made a By Law that "every passenger shall *upon demand* pay the fare legally demandable for the journey," and a passenger, while the car was proceeding, refused to pay his fare when demanded by the conductor, declaring that he would not pay until he had arrived at the end of his journey; it was held by the Court of Common Pleas that he had broken the By Law and was liable to the penalty.—*Eggington v. Pearl*, 33 L. T. 428.

The 21 & 22 Vict. cap. 98, sect. 34, enabled a Local Board to make a By Law as to the giving notices in reference to new buildings, and accordingly a Local Board made a By Law requiring a fortnight's notice to be given of the intention to erect a new building.

The occupier of a house within their district caused a small building, which had been erected against the wall of a yard belonging to his house, to be removed to another side of the yard, using in its reconstruction other parts of the wall for two sides of it, but substantially the same materials with which it had been originally constructed. The Court of Common Pleas held that this was a *new building* within the meaning of the By Law, and that there had been a breach of it.—*Hobbs v. Dance*, 43 L. J. M. C. 21 ; 29 L. T. 687.

As regards the defence to an action on a By Law, it is to be stated that previous relaxation on the part of the body making it in favour of any persons affords no answer.—*The Rhymney Railway Company v. The Taff Vale Railway Company*, 7 Jur. (N. S.) 202 ; 29 Beav. 153.

Again, where the By Law is not in itself unreasonable, if the Defendant would contend that it is so, he must prove the facts necessary to establish the unreasonableness.—*Ib.*

CHAPTER IX.

OF THE CONSTRUCTION.

Construction
of certain By
Laws.

I DEVOTE the last chapter to show the construction which the Courts have placed upon certain By-Laws brought before them for that purpose.

This is for the most part a desultory chapter, as there is no principle or general rule to be obtained from such cases.

General
Observations.

Yet there are some observations made by the Judges in the cases which have come before them, which should be here set forth as preliminary notes.

Thus, in *Vintners' Company v. Passey*, 1 Burr. 239, Denison, J., said, "By Laws ought to have a *reasonable* construction. We ought not to construe them so strictly as to take them to be void, if every particular reason of making them does not appear."

In *Q. v. The Saddlers' Company* in the House of Lords, 32 L. J. (Q.B.) 360, Lord Wensleydale says, "As in one sense of the word the By Law is good and the other not, the rule is that it ought to be construed so as to make it valid, and not to defeat it according to the principle laid down in *Poultern's Company v. Phillips*," which case is noticed hereafter.

The Court of Exchequer Chamber had previously stated (S. C. 3 E. & E. 81), "The Court ought not to construe a By Law like a plea in estoppel, but ought to put upon it such a construction as would, if possible, make it effectual."

The following cases also show how far the Courts will make necessary implications of exceptions in By Laws which may be expressed in general terms. Decisions on particular cases.

In *The City of London v. Vanacre*, 1 L. Raym. 500; Carth. 83; Lord Holt, in giving judgment, speaking upon a By Law general in its terms requiring that persons elected to the office of Sheriff should accept the office or pay a fine, to which objection was made that there was no exception in the case of such person being insane, observed "that such persons would be excepted in all laws, and therefore it would be ridiculous to make an express exception."

Thus, also, Lee, C. J., in *Bosworth v. Herne*, C. t. H. 409, says, "As to there being no exception of cases of necessity that is an exception in all laws, and in the case of *The City of London v. Vanacre* it is so holden, and the Defendant may have advantage of such necessity in the action."

Reference should be made to the case of *Q. v. The Saddlers' Company*, 3 E. & B. 42, stated on page 111 above, where the House of Lords construed the words *become insolvent* in a By Law.

Where a By Law is open to two constructions, and according to one it would be illegal, the Court will prefer to adopt the other, although in that event the facts of a particular case will constitute a breach.—*Dearden v. Townsend*, L. R. 1 Q. B. 10.

A By Law founded on a custom imposed a penalty upon every person not a freeman who should sell any goods by retail within a certain city, and an objection being taken that fairs and markets were not excepted, the Court of King's Bench held that it was not necessary that there should be any exception, as it seems on the ground that they were necessarily excepted by implication—*Harris v. Wakeman*, Say. 225.

In a previous case in the same volume, p. 182, *Moir v. Murray*, there was a similar decision in reference to a custom.

A By Law made under a custom imposed a penalty for which the lord might distrain, without saying *upon whose goods*. It was held that it should be intended that the goods *of the offender* should be distrained.—1 Roll. Abr. 366, citing *Dyer*, 322.

In *Gavell v. Tasker*, 1 Keb. 463, the Court of Common Council in London made a By Law that “any cart found working without a licence from the Company of Woodmongers may be detained until the owner conformed to the government of that Company.”

It was contended that this By Law was void as unreasonable, since it appeared to prevent a person working a cart for his own goods and for his own benefit. But the Court did not allow this objection, holding that it must be intended to apply to *common working carts*.

The East India Company were required by the Statute 9 & 10 Will. 3, cap. 44, sect. 69, to sell their goods imported into England by public and open sales by auction. They were therefore accustomed to sell their goods subject to a regulation, which was considered as a By Law, that any buyer not making good the remainder of his purchase money on or before the day limited for the payment should forfeit his deposit, and should be rendered incapable of buying again at any future sale until he should have given *satisfaction* to the Board of Directors. The Court of Common Pleas held that this word *satisfaction* must be construed to have meant pecuniary compensation for the non-performance of the agreement to pay on the appointed day. A buyer at one of their sales made default on the day, but afterwards within a further

time allowed him by the Company paid the remainder of the purchase money with interest. The Company, interpreting the term *satisfaction* as depending on their discretion, refused to allow him to purchase at their subsequent sales, and the Court held that the directors were mistaken, and that he could maintain an action for damages against the Company—*Eagleton v. The East India Company*, 3 B. & P. 55.

Again, a By Law by a Municipal Corporation that if *any person* should be duly elected their Chamberlain, and should refuse to accept the office, he should forfeit £10, was held to be bad, because it would apply to any person though he might not be a member of the Corporation, whereas he should have been a burgess.—*Mayor of Oxon v. Wildgoose*, 3 Lev. 293; and it was held that words *duly elected* did not exclude this ambiguity. Implied exceptions.

But in the case of *The Tobacco Pipe Makers' Company v. Woodroffe*, 7 B. & C. 838, the Court of Queen's Bench overruled this case, and held that a By Law worded that if any *person* who shall be chosen a warden shall refuse to accept the office and take the oath, he shall forfeit £6 13s. 4d., was valid, inasmuch as it must be construed as applying to such person only as was *eligible*.

So in the case of *The Poulterers' Company v. Phillips*, 6 Bing. N. C. 314, the Company which comprises all poulterers in the City of London and within seven miles thereof, made a By Law enabling the Company to admit into the livery of the Company freemen of the said Company, and imposed a penalty of £10 upon any person so called who refused to accept the office without reasonable excuse. This By Law was held to be valid, although it did not require the person to be also free of the City of London, without which qualification he could not be

a member of the Company. The Court held that it was necessarily to be implied that the person to be admitted must be eligible.

. The Statute 7 & 8 Geo. 4, cap. 75, empowered the Court of the Mayor and Aldermen of London to make By Laws for the government of the freemen of the Company of Watermen, and the boats, vessels, and other craft, to be rowed or worked within the limits of the Act, provided they be not inconsistent with the laws of the kingdom or the provisions of the Act. Sects. 102 and 103 prohibited the employment of non-freemen when servants of the owners of lighters for carrying their own goods, or the employment of non-freemen in lighters and other craft carrying passengers for hire, or goods or merchandise for hire.

A By Law imposed a penalty on any freeman who should set at work to row, or permit, or suffer to be set at work, or row, or in any manner navigate any lighter, barge, boat, or other craft upon the river, *any other person not being a freeman.*

A freeman of the Company who had employed a non-freeman for hire to assist in navigating a barge was convicted of a breach of the By Law.

It was held that this By Law was good. It could not be construed as preventing a freeman *in a case of peril* from employing some person to aid him, but could only apply to the employment of persons for the ordinary rowing and navigation of the barge and other craft.

Again, it was doubtful whether it would apply to prevent a freeman from employing a person to assist him in navigating, though not for hire, and though the barge was not navigated for hire.

But if it did, the Court held that it would not be bad.—*Edmonds*, App., *The Master of the Watermen's Company*, Resp., 1 Jur. (N.S.) 727.

Another By Law enacted that no *steamboat* or vessel should navigate on the river at a greater speed than five miles in an hour under a penalty of £5. It was held that this By Law was within the Statute, as a *steamboat* was a boat or vessel, and consequently was included within the terms of the Act.—*Tisdell v. Combe*, 7 Ad. & E. 788.

Where a Charter provided that if a capital burgess died his successor should be chosen out of the secondary burgesses, and if they died their successors should be chosen out of the inhabitants, a By Law was made imposing a penalty upon every inhabitant who, being chosen a burgess, should refuse to serve.

The Court of Queen's Bench held that this By Law applied to the case of a burgess chosen out of the inhabitants, and not to a secondary burgess chosen to be a capital burgess.—*Mayor and Burgesses of Wokingham v. Johnson*, C. t. H. 284.

A By Law in a Municipal Corporation enacted that "a Court should be held once a year, at which it should and might be lawful for the bailiffs to admit to the freedom of the town such persons of good fame as had been resident therein for one whole year." It was held that this By Law did not give to every such person who had been so resident for that period an absolute right to be admitted.

Lord Tenterden, C.J., said, "It is impossible to suppose that the Corporation who themselves made the By Law should have intended by using the words 'it shall and may be lawful' to make it obligatory upon them to admit to their freedom all the persons therein described."—*K. v. The Corporation of Eye*, 1 B. & C. 85.

A By Law made by Improvement Commissioners

under the 21 & 22 Vict. cap. 98, provided that "every building to be erected and used as a dwelling-house, shall, during such use, have in the rear or at the side thereof an *open space*, exclusively belonging thereto, to the extent of at least 150 square feet, free from any erection thereon above the level of the ground other than a privy (with a certain exception), and the distance across such open space between every such building and the opposite property at the rear or side, exclusive of any common passage, shall be 10 feet at least," with some other provisions for progressive heights.

It was held by the Court of Common Pleas in construing this By Law, that the space required to be left between the building to be erected and the opposite property must be co-extensive with the line of demarcation between the two, and that *at no point* should a less distance than that prescribed by the By Law intervene between them, exclusive of any common passage—*Anderton v. Rigby*, 13 C. B. (N.S.) 603.

A Local Board, following the 21 & 22 Vict. cap. 98, sect. 34, made a By Law, headed "Width and Level of *New Streets*," providing for the width of *new streets*, dividing them into Front, Cross, and Back streets; and in a subsequent paragraph required that "no dwelling-house shall be built immediately adjoining any back street without the special permission of the Local Board." It was held that this provision applied only to *new* back streets, and not to a *new* building in an *old* back street—*Shiel v. Mayor of Sunderland*, 6 H. & C. 797.

In constructing what are termed Building By Laws, some assistance may be obtained from *Pearson v. Local Board of Hull*, 3 H. & C. 921. There a Local Improvement Act required that every house to be thereafter erected on vacant ground should

have a back yard, or other vacant ground and area, of not less than 8 feet, extending from the main building for the whole length of such building. The Court of Exchequer expressed a strong opinion that the vacant space must be at the back and not at the side of the new building.

In the case of "the *Henry Morton*," before the Judicial Committee of the Privy Council, reported in 31 L. T. 859, certain By Laws made by the Conservators of the River Tyne came under the consideration of the Court where there had been a collision between two vessels in that river, and much loss caused thereby.

A Railway Company made a By Law that "every Second Class Passenger will be allowed 56 lbs. of Luggage free of charge; but the Company will not be responsible for the care of the same unless booked and paid for accordingly." No provision, however, was made for such booking.

The Court of Common Pleas held that this signified free of *Extra Charge*, the actual charge for the carriage of the Luggage being included in the fare of the passenger.

They also held that where the Luggage of a passenger had been received by a porter of the Company and part was stolen, the Company was liable for the loss, there being no evidence that the passenger knew of this By Law, or that it had been published as the private Act of the Company required.—*The Great Western Railway Company v. Goodman*, 21 L. J. C. P. 197.

A By Law of the Great Eastern Railway Company required that any passenger travelling without a ticket, or refusing, or failing to show, or deliver up his ticket when called for, shall be required to pay

the fare from the station whence the train originally started to the end of his journey. It was held by the Queen's Bench Division of the High Court of Justice, that to entitle the Company to recover for a breach of this By Law it was incumbent upon the officers of the Company to have notified to a passenger who had so refused the amount which he was called upon to pay, as this was a fact within their knowledge and not necessarily within his.—*Brown v. The Great Eastern Railway Co.*; L. R. 2 Q. B. D. 406; 36 L. T. 767.

See other cases as to the construction of Railway By Laws in the Chapter on Evidence.

The Homage of a Manor made the following By Laws:

"Every Copyholder and Freeholder of lands within this manor shall be entitled to common of Pasture for one head of cattle for every £10 annual value of his lands. Provided that the whole number to any Copyholder or Freeholder shall not exceed 30," with another proviso.

"Every occupier of any Copyhold or Freehold lands within this manor shall be entitled to common of pasture when his rent or annual value is at or under £10 to three head of cattle, with an ascending scale to £50 to thirty, and one head for every £5 above £50."

A sum of compensation being payable in respect of the rights of common destroyed by the compulsory taking of the lands, it was held by *Malins, V.-Ch.* that the same was divisible among the *Copyholders and Freeholders* according to the stint fixed by the first By Law—*Fox v. Amhurst*, L. R. 20, Eq. 403.

In *Shillito v. Thompson*, 45 L. J. M. C. 18; L. R. 1 Q. B. D. 12, it appeared that the Town Council of Doncaster, acting under the 5 & 6 Will. 4, cap. 76,

sect. 90, made a By Law rendering any person exposing for sale any unsound, putrid, or unwholesome meat, or provisions unfit for food or deleterious to health, liable to a penalty of 40s. A tradesman was convicted of selling cheese which the Justices found was unfit for food. The Court held upon a case stated that the By Law was valid; 1st, that the sale of unwholesome food was a nuisance at Common Law, referring to *Reg. v. Stephenson*, F. & F. 106; 2ndly, that *Cheese* was provision within the meaning of the By Law; and 3rdly, that as the Justices had found that the cheese in question was unfit for food, their decision was conclusive.

It will be seen that the Court referred here to a Common Law nuisance as being one to which the Municipal Corporation Act applies.

I may notice here, the case of *Bury v. Cherryholm*, L. R. 1 Exc. D. 457; 35 L. T. 403, though possibly it should have been introduced in Chap. IV. above, under the head of "Properties of By Laws," No. 9, relating to By Laws, *ultra vires*.

A School Board made a By Law requiring children between five and thirteen to attend school. A child within these ages being employed in a boot manufactory attended school *half time* regularly, pursuant to the Workshops Regulation Act, 1867 (30 & 31 Vict. cap. 146), and it was contended that the child was thereby exempted from the operation of the By Law, because the Education Act, 1870, required that the By Law should not be contrary to anything contained in any Act for regulating the education of children employed in labour.

The High Court of Justice decided, however, that the By Law was not contrary to "the Workshop Act," but only added something to it, in accordance with the provision of the general law requiring that

all children should have a certain amount of Education.

The Clyde Navigation Company made a By Law with reference to the navigation of the River Clyde, that "every steamer navigating the river shall be manned by an experienced captain, *or sailing-master*, and a sufficient number of able-bodied and experienced men." A steam-vessel, newly-built, was sent down the river from the builder's yard for a trial-trip. She had a qualified pilot in charge, with three persons, not then commissioned, but who afterwards became the captain and mate, and with twenty-five men for a crew. It was held that, assuming that the By Law applied to a trial-trip, it was duly complied with, as the pilot was to be considered as a sailing-master.

Another By Law required every vessel to have a person duly qualified to be stationed *at the bow* as a look-out, and it was held that the pilot being stationed on the bridge, which was the proper place for a look-out, the By Law was obeyed.—*Clyde Navigation Company v. Barclay*, L. R. 1 App. 797; 36 L. T. 379.

Lastly, in *Higham v. Wright*, 46 L. J. M. C. 223, the Queen's Bench Division of the High Court of Justice gave a construction to a Special Rule made under "The Mines Regulation Act," 35 & 36 Vict. cap. 75, as to the meaning of the words *Persons employed*.

ADDENDUM.

After the above portion of this work had been printed, but while the publication was delayed for the preparation of the Appendix, certain additional provisions in reference to By Laws were enacted by the Legislature; and to render this work complete, as far as my endeavours enable me, I have added them here.

INDUSTRIAL AND PROVIDENT SOCIETIES.

The 39 & 40 Vict. cap. 45, which enables Industrial and Provident Societies to make *special resolutions*, prescribes in sect. 16 the mode in which they shall be made.

BY LAWS IN RELATION TO COMMONS.

The 39 & 40 Vict. cap. 56, sect. 15, provides that

The majority in value of the *owners* of skirts or rights of pasture Owners may in any regulated pasture created under the provisions of the make By Laws. General Inclosure Act, 1845, in addition to the powers they now possess, are hereby authorized at any annual meeting for the election of Field Reeves to make By Laws and Regulations—

“For the prevention of, or protection from, nuisances;

“Or for keeping order on the regulated pasture;

“And for general management and enjoyment of the regulated pasture;

“Provided the consent of the Lord of the Manor is given to such By Laws.”

Sect. 10. Any By Law made in pursuance of that Act, and any Provision as alteration made therein, and any revocation of a By Law, shall to the con- not be of any validity until it has been *confirmed* by one of Her firmation of Majesty's Principal Secretaries of State. By Laws.

Penalties
may be im-
posed.

Notice of
application for
confirmation
of By Laws.

Pecuniary penalties (to be recovered summarily before any two Justices may be imposed by any such By Laws on persons breaking the same; provided that no penalty exceeds for one offence the sum of forty shillings.

Sect 17. No such confirmation shall take place unless notice of the intention to apply therefore, stating the effect of this section, has been published by the conservators (sic) one month at least before the application.

During one month at least before the application, a copy of every By Law, the making, alteration, or revocation of which is submitted for confirmation, shall be kept at the office of the person or body of persons making, altering, or revoking such By Law, open for inspection by persons interested;

And such person or body of persons shall furnish a printed copy thereof to every person applying for the same, on payment of a sum not exceeding one shilling for each copy

ADDITIONAL BY LAWS IN RELATION TO THE SALMON FISHERIES.

By the 39 & 40 Vict. cap. 19, it is enacted that, subject to the provisions contained in sects. 39, 40, 41, 42, 43, 44 and 45, of "The Salmon Fishery Act, 1873," for the making, confirming, publishing and proving of By Laws, a Board of Conservators may at any time after the commencement of the Act (1st September, 1876), make a By Law, and alter the same from time to time for the following purposes, that is to say:—

"To alter the period during which it shall be illegal to take or kill Trout within any fishery district, or in any portion of a fishery district, so that the period within which Trout may not be taken or killed shall not commence earlier than the 2nd of September, nor later than the 2nd day of November in each year, and shall not be less than 123 days."

And the said Board may by any such By Law impose a penalty not exceeding £5 for each offence against such By Law, and such penalties shall be recovered and applied in manner provided in and by "The Salmon Fishery Act 1873."

Reference should be made to p. 51, in regard to the authority for By Laws as to the Salmon Fisheries; to p. 81, as to the manner of making them; to p. 172,

as to the confirming of them; to p. 194, as to their publication; to p. 243, as to the enforcing them; and to p. 260, as to their proof.

ADDITIONAL BY LAWS IN RELATION TO ELEMENTARY EDUCATION.

The 39 & 40 Vict. cap. 79, contains the following provisions relating to By Laws for enforcing Elementary Education. They are in addition to the provisions relating to the By Laws by the Board of a School District set forth in p. 50, *ante*.

School Attendance Committee to have like powers with School Boards of enforcing by By Laws attendance of children.

Sect. 21. In a school district, *not within the district of a School Board*, if it is a *Borough*, the School Attendance Committee may if they think fit, and if it is a *parish*, the School Attendance Committee for the Union comprising such parish, on the requisition of the parish, *but not otherwise*, shall make By Laws respecting the education of children at school under sect. 74 of The Elementary Education Act, 1870, as if such School Attendance Committee were a School Board.

(See this sect. set forth in p. 50, *ante*.)

Sect. 22. The Requisition of a parish to a School Attendance Committee for the purposes of this Act, if made, shall be made by a resolution passed by the same persons, and in the same manner, and subject to the same regulations of the Education Department, as a resolution for an application to the Education Department for a School Board, and the expenses incurred with reference to each resolution may be paid in like manner.

Provision as to the requisition of the parish.

(See 33 & 34 Vict. cap. 75, sect. 12, and the Second Sched. Part II., and the Regulations of the Education Department as to the passing of resolutions for such applications, printed in *Owen's Elem. Ed. Acts*, p. 402 of the 12th edition; these Regulations also contain the provisions as to the expenses attending the passing of the resolution, which, according to 33 & 34 Vict. cap. 75, Second Sched. p. 3, No. 2, are to be paid by the overseers out of the Poor-rate.)

The requisition may be accompanied by representations made by a resolution, passed in like manner, as to the nature of the By

Laws desired by the parish; and in making and approving the By Laws, the School Attendance Committee and the Education Department shall consider and have due regard to such representations.

The 33 & 34 Vict. cap. 75, sect. 74, provides for the approval of the By Laws. See p. 171, *ante*.

Provision as to By Laws under sect. 74 of the Elementary Education Act, 1870 (33 & 34 Vict., cap. 75), as extended by this Act.

Sect. 23. For the purposes of this Act, sect. 74 of the Elementary Education Act, 1870, and all enactments of that or any other Act referring to By Laws under that Section, shall be construed as if "School Board" included the authority authorized by this Act to make By Laws.

Provided that nothing in any By Law shall authorize the authority making the same in pursuance of this Act to remit or pay any fees.

It shall be the duty of every Local Authority to enforce the By Laws made by that authority in pursuance of sect. 74 of the Elementary Education Act, 1870.

(See Chap. vii. p. 244, *ante*.)

Effect of subsequent appointment of School Board on By Laws.

Sect. 36 provides for the appointment of a School Board in substitution for the Local Authority acting under that Act, and concludes that "nevertheless all By Laws previously made by the Local Authority shall continue in force subject to being revoked or altered in respect of that district by the School Board in pursuance of sect. 74 of the Elementary Education Act, 1870."

No Prosecutions except with the authority of two members of the School Board or Local Authority.

With reference to the proceedings to enforce By Laws under these Acts, it is provided that:—

Construction of the Act with other enactments.

Sect. 38. No legal proceedings for non-attendance or irregular attendance at school shall be commenced in any Court of summary jurisdiction by any person appointed to carry out the compulsory By Laws of a School Board or Local Authority except by the direction of not less than two members of a School Board or School Attendance Committee.

Sect. 50. Where any act, neglect, or default is punishable under this Act, and also under any enactment, or any By Law made by a School Board or other Local Authority for the time being in force, proceedings may be instituted in respect of such act, neglect, or default under this Act or such other enactment or By Law in the discretion of the authority or person instituting the proceedings, so that proceedings under one enactment or By Law only be instituted in respect of the same act, neglect, or default;

And any *By Law* made either before or after the commencement of this Act (January 1, 1877) by any School Board or other Local Authority under sect. 74 of the Elementary Education Act, 1870, if otherwise valid, shall not be rendered invalid by reason that it is more stringent than *the* provisions of this Act.

Where the facts of the case showed that an offence had been committed against sect. 11 of the Act, the Queen's Bench Division of the High Court of Justice held that the Justice might decline to proceed for a breach of a *By Law* of the School Board which had been violated, they having offered to proceed for the offence.—*In Re Murphy*, L. R. 2 Q. B. D. 397; 36 L. T. 698.

I have also to append some other cases where the Legislature has provided for *By Laws* which had escaped my notice when I prepared the body of this work.

The *first* relates to a subject which, though provided for by Statute, has not, I believe, been yet carried into execution.

It is the case of *Lodging Houses for labouring men established by Local Authorities*. The 14 & 15 Vict. cap. 34, which enabled Local Authorities to establish Lodging Houses for the Labouring Classes, empowers, in sect. 46, such authority "from time to time to make, alter, repeal, and enforce *By Laws* for the management, use and regulation of the Lodging Houses and of the tenants and occupiers thereof, and for determining from time to time the charges for the tenancy or occupation of the Lodging Houses as the Authority may think fit." Local Authority may make *By Laws* for regulating Lodging Houses.

"And to appoint any penalty, not exceeding *Five Pounds*, for any and every Breach, whether by their officers or servants, or by other persons, of any *By Law* made by them;

"And such *By Laws* shall make sufficient provision for the several purposes respectively expressed in the *Schedule* to the Act;

To be approved by
Secretary of
State.
Publication.

"Provided that the By Law shall not be of legal force until approved of by a Secretary of State."

Sect. 47 requires that a printed copy or sufficient abstract of the *By Laws* relating to the management, use, and regulation of the Lodging Houses shall be put up and at all times kept in every room thereof.

Then *the Schedule* is as follows:—

- "1. By Laws to be made in *all cases*—
 - "For securing that the Lodging Houses shall be under the management and control of the officers, servants, or others, appointed or employed in that behalf by the Local Authority;
 - "For securing the due separation at night of men and boys above eight years old from women and girls;
 - "For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour and nuisances;
 - "For determining the duties of the officers, servants, and others, appointed by the Local Authority;
- "2. By Laws to be made in *Boroughs, Districts, and Parishes*, wholly or partially within the districts of Local Boards of Health;
 - "For carrying out the regulations of the Local Boards of Health;
- "3. By Laws to be made in *Parishes*:
 - "For regulating the procedure of the Commissioners."

I doubt, as already stated, whether this Act has been acted upon, and do not think it is likely to be adopted in any Parish which is not an Urban Sanitary Authority.

By Laws as to
Emigrants.

The *second* relates to *Emigrants*.
The Passengers Act Amendment Act, 1855 (18 & 19 Vict. cap. 119, sect. 82), enables

BY LAWS AS TO EMIGRANTS.

- "The Trustees and other persons charged with the management of any Docks or Basins in any Port within the United Kingdom from which Passenger Ships are despatched to make, and from time to time to alter, amend, or repeal, such rules and *By Laws* as may be necessary;

- "For prescribing the Docks, Basins, or other places, at which persons arriving by sea at such ports for the purpose of emigrating, or actually emigrating therefrom, shall be landed and embarked;
- "And the mode of their landing and embarkation;
- "And for licensing porters to carry their Luggage, and otherwise to attend upon them; and
- "For the storing and safe custody of their Luggage; and
- "For admitting persons to, and excluding persons from, access to such Docks or Basins; and
- "For attaching a penalty for breach of any such rules or By Laws."

The other clauses of this Act will be found in their appropriate places.

The *third* relates to *Stipendiary Magistrates*:—
The 26 & 27 Vict., cap. 97, sect. 3, enables

By Law to
fix the Salary
of Stipendiary
Magistrates.

- "Any Local Board of any city or place by a majority of not less than two-thirds of the number of such Board thinking it expedient that a Stipendiary Magistrate should be appointed for such city or place to make a *By Law* or *Minute* fixing the amount of his salary, subject to the approval of a Secretary of State, and such By Law shall be transmitted to such Secretary, and thereupon the Queen may appoint a Stipendiary Magistrate for such place."

The Local Board means a Board appointed under the Public Health Act, the Local Government Act, or Local Improvement Act in any city or place containing a population of not less than 25,000, not being the City of London, nor any Municipal Borough within 5 & 6 Will. 4, cap. 76, nor any place where there is a Stipendiary Magistrate acting by virtue of any Act of Parliament.

The 27 & 28 Vict. cap. 48, sect. 5, enacts that, to prevent the requirements of that Act as to *Cleanliness* and *Ventilation* in a *Factory* being infringed to the detriment of the occupier by the wilful misconduct or wilful negligence of the workmen employed therein, it shall be lawful for the occupier of

Special rules
in Factories
and Alkali
Works.

any Factory to make *Special Rules* for compelling the observance among his workmen of the conditions necessary to insure the required degree of cleanliness and ventilation, and to annex to any breach of such rules a penalty not exceeding £1.

And besides the *Special Rules* which can be made by the Owners of Alkali Works under 26 & 27 Vict. cap. 124 (*see* p. 54, *ante*), such owners are empowered by the 37 & 38 Vict. cap. 43, sect. 8, to make *Special Rules* in regard to the provisions of that Act which relate to the prevention of the discharge of certain noxious gases from Alkali Works.

APPENDIX.

MODEL FORMS OF BY LAWS

PREPARED BY

SEVERAL PUBLIC DEPARTMENTS,

NAMELY:

I. THE BOARD OF TRADE. II. THE EDUCATION DEPARTMENT.

AND

III. THE LOCAL GOVERNMENT BOARD.

I.
THE BOARD OF TRADE.

MODEL BY LAWS FOR RAILWAYS,
RECOMMENDED FOR ADOPTION BY THE BOARD OF TRADE.

BY LAWS and REGULATIONS made by the RAILWAY COMPANY with
the approval of the BOARD OF TRADE,

For regulating the Travelling upon and using of all Railways belonging to, or leased to, the said Company, and with respect to which that Company have power to make By Laws.

No. 1. No passenger will be allowed to enter any carriage used on the Railway, or to travel therein upon the Railway, unless furnished by the Company with a Ticket specifying the class of carriage and the stations for conveyance between which such Ticket is issued. Every passenger shall show and deliver up his Ticket (whether a Contract or Season Ticket or otherwise) to any duly authorized servant of the Company whenever required to do so for any purpose. Any passenger travelling without a Ticket, or failing or refusing to show or deliver up his Ticket as aforesaid, shall be required to pay the fare from the station whence the train originally started to the end of his journey.*

Obtaining Ticket and delivering up the same.

No. 2. Any Passenger using or attempting to use a Ticket on any day for which such Ticket is not avail-

Using Ticket for any other day.

* See on this By Law the cases cited in the Chapter on Evidence, ante, p. 265; *Brown v. The Great Eastern Railway Company*, in the Chapter on Construction, ante, p. 276; and *Chilton v. London and Croydon Railway Company*, in the Chapter on Enforcing the By Law, ante, p. 214.

able, or using a Ticket which has been already used on a previous journey, is hereby subjected to a penalty not exceeding *Forty Shillings*.

Using Ticket for any other station.

No. 3. Any passenger using or attempting to use a Ticket for any other station than that for which it is available will be required to pay the difference between the sum actually paid and the fare between the stations from and to which the passenger has travelled, or, at the option of the Company, the fare from the station to which he was booked to the end of his journey.

Defacing Tickets.

No. 4. Any passenger wilfully altering or defacing his Ticket so as to render the date, number, or any material portion thereof illegible, is hereby subjected to a penalty not exceeding *Forty Shillings*.

Sale and purchase of Return Tickets.

No. 5. A Return Ticket is granted solely for the purpose of enabling the person for whom the same is issued to travel therewith to and from the stations marked thereon, and is not transferable. Any person who sells, or attempts to sell, or parts or attempts to part with the possession of the return half of any Return Ticket in order to enable any other person to travel therewith, is hereby subjected to a penalty not exceeding *Forty Shillings*, and any person purchasing such half of a Return Ticket, or travelling or attempting to travel therewith, shall be liable to pay the fare which he would have been liable to pay for the single journey, and shall, in addition thereto, be subjected to a penalty not exceeding *Forty Shillings*.

Tickets issued when there is room.

No. 6. At the intermediate stations the fares will only be accepted, and the Tickets issued, conditionally: that is to say, in case there shall be room in the train for which the Tickets are issued. In case there shall not be room for all the passengers to whom Tickets have been issued, those to whom Tickets have been issued for the longest distance shall (if reasonably practicable) have the preference, and those to whom Tickets have been issued for the same distance shall (if reasonably practicable) have priority according to the order in which Tickets have been issued, as denoted by the consecutive numbers stamped upon them. The Company will not, however, hold itself responsible for such order of preference or priority being adhered to,

but the fare or difference of fare, if the passenger travel by an ordinary train in a class of carriage inferior to that for which he has a Ticket, shall be immediately returned, on application, to any passenger for whom there is not room as aforesaid, if the application be made before the departure of the train.

No. 7. Every person smoking in any shed or covered platform of a station, or in any building of the Company, or in any carriage or compartment of a carriage not specially provided for that purpose, is hereby subjected to a penalty not exceeding *Forty Shillings*. The Company's officers and servants are required to take the necessary steps to enforce obedience to this By Law; and any person offending against it is liable, in addition to incurring the penalty above mentioned to be summarily removed, at the first opportunity, from the carriage, or from the Company's premises. Smoking.

No. 8. Any person travelling without the special permission of some duly authorized servant of the Company in a carriage or by a train of a superior class to that for which his Ticket was issued, is hereby subjected to a penalty not exceeding *Forty Shillings*; and shall in addition be liable to pay the fare, according to the class of carriage in which he is travelling, from the station whence the train originally started, unless he shows that he had no intent to defraud. Using Ticket for superior class.

No. 9. Any person found in a carriage, or elsewhere upon the Company's premises, in a state of intoxication, using obscene or abusive language, or writing obscene or offensive words on any part of the Company's stations or carriages, or committing any nuisance, or otherwise wilfully interfering with the comfort of other passengers, is hereby subjected to a penalty not exceeding *Forty Shillings*, and shall immediately, or, if a passenger, at the first opportunity, be removed from the Company's premises. Being intoxicated or using obscene or abusive language, &c.

No. 10. Any person who wilfully cuts or tears any lining or window strap, or curtain, removes or defaces any number plate, or breaks or scratches any window of a carriage used on the Railway, or who otherwise, except by unavoidable accident, damages, defaces, or injures any such carriage, or any station, or other pro- Damaging property.

perty of the Company, is hereby subjected to a penalty not exceeding *Five Pounds*, in addition to the amount of any damage for which he may be liable.

Travelling on
roof, steps, &c.

No. 11. No passenger shall be permitted to travel on the roof, steps, or footboard of any carriage, or on the engine, or in the guard's van, or any portion of any carriage not intended for the conveyance of passengers; and any passenger persisting in doing so, after being warned to desist by the guard in charge of the train, or any duly authorized servant of the Company, is hereby subjected to a penalty not exceeding *Forty Shillings*, and shall be liable to be summarily removed from the Company's premises.

Entering or
leaving carriage
when in motion.

No. 12. Any passenger entering or leaving, or attempting to enter or leave, any carriage while the train is in motion, or elsewhere than at the side of the carriage adjoining the platform, or other place appointed by the Company for passengers to enter or leave the carriages, is hereby subjected to a penalty not exceeding *Forty Shillings*.

Entering full
carriage.

No. 13. Any passenger persisting in entering a carriage or compartment of a carriage containing the full number of persons which it is constructed to convey, when any such person objects to his so entering the carriage or compartment, is hereby subjected to a penalty not exceeding *Forty Shillings*.

Conveyance of
dogs in car-
riages.

No. 14. Dogs and other animals will not be suffered to accompany passengers in the carriages, but will be conveyed separately and charged for, and any person taking a dog or other animal with him into any passenger carriage used on the Railway is hereby subjected to a penalty not exceeding *Forty Shillings*.

Taking loaded
Fire Arms.

No. 15. Loaded fire-arms are on no account to be taken into or placed upon any carriage, waggon, truck, or other vehicle forming or intended to form a train or any portion of a train on the Railway, or to be brought to the station or on to the premises of the Company, and every person so offending is hereby subjected to a penalty not exceeding *Five Pounds*.

Travelling with
infectious dis-
order.

No. 16. The Company may refuse to carry any person who has any infectious disorder. If any person who has any such disorder is found upon the premises of the

Company, or travels or attempts to travel on the Railway of the Company, without the special permission of the Company, he shall be liable to a penalty not exceeding *Forty Shillings*, in addition to the forfeiture of any fare which he may have paid, *and may be removed at the first opportunity from the Company's premises*. Any person who has charge of any person suffering from an infectious disorder while upon the premises of the Company, or travelling or attempting to travel on the Railway, or who aids or assists any person suffering from such disorder, in being upon the premises of the Company, or travelling or attempting to travel on the Railway, shall be liable to a penalty not exceeding *Forty Shillings*, unless the person suffering from such disorder be travelling with the special permission of the Company.*

No. 17. Every driver or conductor of an omnibus, cab, carriage, or other vehicle shall, while in or upon any station yard or other premises of the Company, obey the reasonable directions of the Company's officers and servants duly authorized in that behalf; and every person offending against this Regulation is hereby subjected to a penalty not exceeding *Forty Shillings*.

Omnibuses, &c.,
drivers obeying
servants of
Company.

Given under the common seal of the

Railway Company

the day of , 18 .



Secretary of the Company.

The Board of Trade hereby signify their allowance and approval of the above By Laws and Regulations.

Signed by order of the Board of Trade
the day of , 18 .

An Assistant-Secretary to the Board of Trade.

* See in 38 & 39 Vict. cap. 55, sect. 126, the penalty imposed on a person exposing himself or another suffering under any infectious disorder.

**MODEL BY LAWS FOR TRAMWAYS,
RECOMMENDED FOR ADOPTION BY THE BOARD OF TRADE.**

BY LAWS and REGULATIONS made by the ——— COMPANY under the
powers conferred on the COMPANY by the TRAMWAYS ACT, 1870.

1. The By Laws and Regulations hereinafter set forth shall extend and apply to all carriages of the Company, and to all places with respect to which the Company have power to make By Laws or Regulations.

2. Every passenger shall enter or depart from a carriage by the hindmost or conductor's platform, and not otherwise.

3. No passenger shall smoke inside any carriage.

4. No passenger or other person shall, while travelling in or upon any carriage, play or perform upon any musical instrument.

5. A person in a state of intoxication shall not be allowed to enter or mount upon any carriage, and if found in or upon any carriage shall be immediately removed by or under the direction of the conductor.

6. No person shall swear or use obscene or offensive language whilst in or upon any carriage, or commit any nuisance in or upon or against any carriage, or wilfully interfere with the comfort of any passenger.

7. No person shall wilfully cut, tear, soil, or damage the cushions or the linings, or remove or deface any number plate, printed or other notice, in or on the carriage, or break, or scratch any window or otherwise wilfully damage any carriage.

Any person acting in contravention of this Regulation, shall be liable to the penalty prescribed by these By Laws and Regulations, in addition to the liability to pay the amount of any damage done.

8. A person whose dress or clothing might, in the opinion of the conductor of a carriage, soil or injure the linings or cushions of the carriage, or the dress or clothing of any passenger, or a person who, in the opinion of the conductor, might for any other reason be offensive to passengers, shall not be entitled to enter or remain in the interior of any carriage, and may be prevented from

entering the interior of any carriage, and shall not enter the interior of any carriage after having been requested not to do so by the conductor; and, if found in the interior of any carriage, shall, on request of the conductor, leave the interior of the carriage upon the fare, if previously paid, being returned.

9. Each passenger shall, *upon demand*, pay to the conductor or other duly authorized officer of the Company, the fare, legally demandable for the journey.*

10. Each passenger shall show his ticket (if any) when required so to do to the conductor or any duly authorized servant of the Company, and shall also when required so to do either deliver up his ticket or pay the fare legally demandable for the distance travelled over by such passenger.

11. A passenger not being an artisan, mechanic, or daily labourer, within the true intent and meaning of the Acts of Parliament relating to the Company, shall not use, or attempt to use, any Ticket intended only for such artisans, mechanics, or daily labourers.

12. Personal or other luggage (including the tools of artisans, mechanics, and labourers) shall, unless otherwise permitted by the conductor, be placed on the front or driver's platform, and not in the interior or on the roof of the carriage.

13. No passenger or other person not being a servant of the Company shall be permitted to travel on the steps or platforms of any carriage, or stand either on the roof or in the interior, or sit on the outside rail on the roof of any carriage, and shall cease to do so immediately on request by the conductor.

14. No person, except a passenger or intending passenger, shall enter or mount any carriage, and no person shall hold or hang on by or to any part of any carriage or travel therein, otherwise than on a seat provided for passengers.

15. When any carriage contains the full number of passengers which it is licensed to contain, no additional person shall enter, mount, or remain in or on any such carriage when warned by the conductor not to do so.

16. When a carriage contains the full licensed number

* See *Eggington v. Pearl*, in the Chapter on Evidence, p. 266, *ante*.

of passengers, a notice to that effect shall be placed in conspicuous letters, and in a conspicuous position on the carriage.

17. The conductor shall not permit any passenger beyond the licensed number to enter or mount or remain in or upon any part of a carriage.

18. No person shall enter, mount, or leave, or attempt to enter, mount, or leave any carriage whilst in motion.

19. No dog or other animal shall be allowed in or on any carriage, except by permission of the conductor, nor in any case in which the conveyance of such dog or other animal might be offensive or an annoyance to passengers. No person shall take a dog or other animal into any carriage after having been requested not to do so by the conductor. Any dog or other animal taken into or on any carriage in breach of this Regulation shall be removed by the person in charge of such dog or other animal from the carriage immediately upon request of the conductor, and in default of compliance with such request may be removed by or under the direction of the conductor.

20. No person shall travel in or on any carriage of the Company with loaded fire-arms.

21. No passenger shall wilfully obstruct or impede any officer or servant of the Company in the execution of his duty, upon or in connexion with any carriage or tramway of the Company.

22. The conductor of each carriage shall enforce or prevent the breach of these By Laws and Regulations to the best of his ability.

23. Any person offending against or committing a breach of any of these By Laws or Regulations shall be liable to a penalty *not exceeding Forty Shillings*.

24. The expression "conductor" shall include any officer or servant in the employment of the Company and having charge of a carriage.

25. There shall be placed and kept placed in a conspicuous position inside of each carriage in use a printed copy of these By Laws and Regulations.

26. These By Laws shall come into force on the day of

, 187 .

Secretary of the Company.

II.

EDUCATION DEPARTMENT.

MODEL BY LAWS FOR EDUCATION

RECOMMENDED FOR ADOPTION BY THE EDUCATION DEPARTMENT.

Form 137.

BY LAWS made under Section 74 of the ELEMENTARY EDUCATION ACT,
1870, as amended by the ELEMENTARY EDUCATION ACT, 1876,

FOR THE

*

BY THE

†

* [Insert the name of the district to which it is intended that the proposed By Laws shall relate.]

† [Insert the name of the School Board or School Attendance Committee making the proposed By Laws.]

Definitions.

1. In these By Laws

The term "district" means*

The term "child" means a child residing in the district.

The term "school" means a certified efficient school.

"Attendance" means an attendance at a morning or afternoon meeting as defined by the Code of 1876.

The "Code of 1876" means the Code of Minutes of the Education Department made in the year 1876, with respect to the Parliamentary Grant to Public Elementary Schools in England.

The term "Local Authority" means the Local Authority for the district acting for the time being under the Elementary Education Act, 1876.

2. The parent of every child of not less than 5, nor more than 13, years of age, shall cause such child to ^{Children to attend school.}

attend school, unless there be a reasonable excuse for non-attendance.

Reasonable Ex-
cuses.

Any of the following reasons shall be a reasonable excuse, namely:—

(a) That the child is under efficient instruction in some other manner.

(b) That the child has been prevented from attending school by sickness or any other unavoidable cause.

* [Insert a num-
ber not greater
than three.]

(c) That there is no Public Elementary School open which the child can attend within* miles, measured according to the nearest road from the residence of such child.

Time of attend-
ance.

3. The time during which every child shall attend school shall be the whole time for which the school selected shall be open for the instruction of children of similar age, including the day fixed by Her Majesty's Inspector for his annual visit.

Proviso as to
religion and
labour Acts.

4. Provided always that nothing in these By Laws—

(a) Shall prevent the withdrawal of any child from any religious observance or instruction in religious subjects;

(b) Shall require any child to attend school on any day exclusively set apart for religious observance by the religious body to which its parent belongs; or

(c) Shall have any force or effect in so far as it may be contrary to anything contained in any Act for regulating the education of children employed in labour.

Proviso as to
standard for ex-
emption.

5. And provided always that—

† [This Standard
has been gener-
ally adopted. No
Standard lower
than the 4th will
be approved.]

(a) A child between ten and thirteen years of age shall not be required to attend school if such child has received a certificate from one of Her Majesty's Inspectors of Schools that it has reached the *Fifth* Standard prescribed by the Code of 1876.†

‡ [This may be
varied by insert-
ing " & attend-
ances in each
week during
which the School
is open " or " 150
(or more) attend-
ances during cer-
tain (specified)
months in the
year.]

(b) A child between ten and thirteen years of age, shown to the satisfaction of the Local Authority to be beneficially and necessarily employed, shall not be required to attend school for more than 150‡

attendances in each year

if such child has received a certificate from one of Her Majesty's Inspectors of Schools that it has reached the

§ [Insert the
Third, or some
other Standard.]

§ Standard prescribed by the Code of 1876.

6. Every parent who shall not observe, or shall neglect or violate these By Laws, or any of them, shall, upon conviction, be liable to a penalty not exceeding, with the costs, five shillings for each offence.

7. Any By Laws heretofore made under Section 74 of the Elementary Education Act, 1870, or under that Section as amended by the Elementary Education Act, 1876, are hereby revoked as from the day on which the present By Laws shall come into operation.

The above By Laws were made by the*
at a meeting held on
the day of 18 .
In witness whereof the School Board have hereunto set
their common seal this day of 18 .

(L.S.)

Sealed in the presence of

*Chairman.
Clerk.*

*[Insert the name of the School Board or School Attendance Committee making the proposed By Laws.]

[The words from "In witness" to "in the presence of" must be omitted when a School Attendance Committee make the By Laws.]

*The EDUCATION DEPARTMENT send out the following INSTRUCTIONS
AS TO THESE BY LAWS :—*

(1.) "When a School Board or School Attendance Committee desire to make By Laws, under Section 74 of the Elementary Education Act, 1870, as amended by the Elementary Education Act, 1876, the following instructions should be attended to :—

Form 137 in duplicate.

(2.) "Such alterations as the School Board or School Attendance Committee consider necessary, should be made on each of the enclosed Forms 137, which contain the provisions which have been usually sanctioned by Her Majesty in Council.

(3.) "One of the Forms 137, with the alterations in ink, should be returned to the Education Department for consideration, before any further steps whatever are taken. The other Form 137 should be retained by the School Board or School Attendance Committee.

(4.) "As soon as the Education Committee consider that the By Laws are in such a form that they may be printed and deposited, the Board or School Attendance

Committee will be informed of that fact, and full instructions will be sent to the Board or School Attendance Committee, as to the deposit and publication of notice of deposit required by Section 74.

(5.) "Compliance with the above instructions is calculated to save time and expense."

It will be right to refer to the remarks in the Chapter on the Confirmation of By Laws, in the body of this work, page 179.

III.

THE LOCAL GOVERNMENT BOARD.

The following is a series of model forms of BY LAWS prepared and issued by the LOCAL GOVERNMENT BOARD. They relate to—

1. Public Baths.
2. Public Wash Houses.
3. Public Bathing.
4. Open Bathing-places.
5. Hackney Carriages.
6. Markets.
7. Hop-picking.
8. Cleansing of footways and privies, and
9. Removal of refuse nuisances.
10. New Streets and buildings.
11. Common Lodging Houses and
12. Slaughter Houses.

(1.) BY LAWS FOR THE MANAGEMENT, USE, AND
REGULATION OF THE PUBLIC BATHS.

For securing that the baths shall be under the due management and control of the officers, servants, or others appointed or employed in that behalf by the Sanitary Authority;

For securing adequate privacy to persons using the baths :

For securing that men and boys above eight years old shall bathe separately from women and girls and children under eight years old :

For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour, and nuisances.

1. Every person resorting to the public baths shall, before being admitted to any bath or bath-room, obtain, by payment from the authorized money-taker, a ticket whereon shall be stated, in addition to such other particulars as the Sanitary Authority may from time to time direct, the class or description of bath to which such person shall be entitled to be admitted.

Such person before being admitted to use such bath shall, upon the application of any person appointed or acting as an attendant of such bath, deliver such ticket to such attendant.

2. He shall not, by forcible or improper means, seek admission to any bath-room or compartment which shall be occupied by any person using a separate bath.

3. He shall not, by forcible or improper means, seek admission to any swimming bath at any time when such swimming bath or the dressing-rooms, closets, boxes, or compartments attached thereto shall be occupied by the full number of persons authorized to use, at one and the same time, such swimming bath or dressing-rooms, closets, boxes, or compartments.

4. He shall not, by forcible or improper means, seek admission to any bath before any person who, by

priority of payment, shall be entitled to prior admission to such bath.

5. He shall not knowingly use any bath of a higher class or description than that of the bath for which he shall have obtained a ticket of admission.

6. He shall, while waiting on the premises for admission to any bath or bath-room, remain only in such portion of the premises as shall be set apart as a waiting-room for intending bathers.

7. He shall not, after using any bath or quitting any bath-room, loiter, or remain without reasonable excuse, in any passage leading to or from any bath or bath-room.

8. He shall not, at any time after being admitted to any swimming bath or while occupying any dressing-room, closet, box, or compartment attached thereto, enter or seek admission to any other dressing-room, closet, box, or compartment, when occupied by any person, without the consent of such person, or otherwise knowingly intrude upon or interfere with the privacy of any other person using such swimming bath, or occupying any dressing-room, closet, box, or compartment attached thereto.

9. He shall not, at any time, after being admitted to or while occupying any bath-room or compartment containing a separate bath, enter or seek admission from such bath-room or compartment to any adjoining bath-room or compartment when occupied by any person, without the consent of such person, or otherwise knowingly intrude upon, or interfere with the privacy of any person occupying any adjoining bath-room or compartment.

10. A man or boy above eight years old resorting to the public baths shall not enter or use any bath which shall be appointed or appropriated for the use of any woman, or girl, or child under eight years old.

11. A woman, or girl, or child under eight years old, resorting to the public baths shall not enter or use any bath which shall be appointed or appropriated for the use of any man or boy above eight years old.

12. Every person resorting to the public baths shall, at all times, exercise reasonable and proper care in the

use of any bath or bath-room, dressing-room, closet, box, or compartment.

13. A person resorting to the public baths shall not, at any time, carelessly or negligently break, or injure, or improperly interfere with the due and efficient action of any lock, cock, valve, pipe, work, or engine or machinery in connection with any bath, or carelessly or negligently injure any furniture, fittings, or conveniences of any bath, bath-room, dressing-room, closet, box, or compartment.

14. He shall not, at any time, carelessly or negligently injure or destroy any towel, or other linen, or other article supplied for his use.

15. He shall not, at any time, while being upon the premises, by any disorderly or improper conduct disturb or interrupt any other person in the proper use of any bath, bath-room, dressing-room, closet, box, or compartment, or any officer, servant, or person appointed by the Sanitary Authority in the proper execution of his duty.

16. He shall not cause or allow any dog belonging to such person, or under his control, to enter or remain in any bath, bath-room, dressing-room, closet, box, or compartment, or in any passage leading to or from any bath or bath-room.

17. He shall not, at any time, while being upon the premises, use any indecent and offensive language, or behave in an indecent and offensive manner.

18. He shall not, at any time, while being in any swimming bath use any soap or other substance or preparation whereby the water in such swimming bath may be rendered turbid or unfit for the proper use of bathers.

19. He shall not wilfully and improperly foul or pollute the water in any separate bath, or in any swimming bath, or wilfully and improperly soil or defile any towel, bathing-drawers, or bathing-dress supplied for his use, or any bath-room, dressing-room, closet, box, or compartment, or any furniture or article therein.

20. He shall not, at any time, while suffering from any cutaneous, infectious, or contagious disease, enter or use any swimming bath or any separate bath.

Penalties.

21. Every person resorting to the public baths who shall offend against any of the foregoing By Laws shall be liable for every such offence to a penalty of :

Provided nevertheless, that the justices before whom any complaint may be made or any proceedings may be taken in respect of any such offence may, if they think fit, adjudge the payment, as a penalty, of any sum less than the full amount of the penalty imposed by this By Law.

(2.) BY LAWS FOR THE MANAGEMENT, USE, AND
REGULATION OF THE PUBLIC WASH-HOUSES.

For securing that the wash-houses shall be under the due management and control of the officers, servants, or others appointed or employed in that behalf by the Sanitary Authority.

For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour, and nuisances.

1. A person resorting to the public wash-houses, shall not use any washing-tub or trough, or any copper or boiler for washing, or any conveniences for drying any clothes or other articles, until such person shall have obtained from the authorized money-taker a ticket, whereon shall be stated, in addition to such other particulars as the Sanitary Authority may from time to time direct, *the class* of washing-tub or trough, copper or boiler, or conveniences for drying which such person may be admitted to use.

2. Every such person who shall have been admitted to use any washing-tub or trough, copper or boiler, or conveniences for drying shall, before quitting the public wash-houses, produce, upon the application of any attendant of such wash-houses, the ticket of admission which may have been issued to such person by the authorized money-taker, and such person shall

allow such attendant to enter in such ticket and duly sign an exact statement of the time at which such person shall have ceased to use such washing-tub or trough, copper or boiler, or conveniences for drying.

Such person shall, before quitting the public wash-houses, deliver to the authorized money-taker the ticket duly signed by the attendant, and shall, upon the application of such money-taker, pay to him the sum prescribed as the authorized charge for the use during the time specified in such ticket of the washing-tub or trough, copper or boiler, or conveniences for drying, which such person may have been admitted to use.

3. Every such person shall, while waiting for admission to use any washing-tub or trough, or any copper or boiler, or any conveniences for drying, remain only in such portion of the premises as shall be set apart as a waiting-room for intending washers.

4. He shall not knowingly use any washing-tub or trough, or any copper or boiler, or any conveniences for drying of a *higher class* than that of the washing-tub or trough, copper or boiler, or conveniences for drying for which such person shall have obtained a ticket of admission.

5. He shall not, by forcible or improper means, use any washing-tub or trough, or any copper or boiler, or any conveniences for drying, before any person who, having previously obtained the necessary ticket from the authorized money-taker, shall be entitled to prior admission to the use, and shall not have ceased to require the use of such washing-tub or trough, copper or boiler, or conveniences for drying.

6. He shall at all times exercise reasonable and proper care in the use of any washing-tub or trough, or any copper or boiler, or any conveniences for drying.

7. He shall not, at any time, carelessly or negligently break or injure, or improperly interfere with the due and efficient action of any lock, cock, valve, pipe, work, or engine or machinery constructed, provided, or used for or in connection with the supply of water to any washing-tub or trough, or any copper or boiler, or carelessly or negligently injure any furniture, fittings or conveniences of the public wash-houses.

8. He shall not wilfully or improperly remove or displace, or wilfully, carelessly, or negligently soil or dirty, or carelessly or negligently injure or destroy any clothes or other articles brought to be washed by any other person resorting to the public wash-houses.

9. He shall not, at any time, while being upon the premises, by any disorderly or improper conduct disturb or interrupt any other person in the proper use of any washing-tub or trough, or any copper or boiler, or any conveniences for drying, or any officer, servant, or person employed by the Sanitary Authority in the proper execution of his duty.

10. He shall not, at any time, while using, or before or after using any washing-tub or trough, copper or boiler, or any conveniences for drying, deposit any clothes or other articles, or any receptacle for clothes or other articles, or cause or allow such clothes, articles, or receptacle to be deposited or to remain in such manner or position as to obstruct any passage through, or means of entrance to, or egress from, the public wash-houses, or in such a manner or position as to disturb or interrupt any other person in the proper use of any washing-tub or trough, copper or boiler, or any conveniences for drying.

11. He shall not, at any time, while being upon the premises, use any indecent and offensive language, or behave in an indecent and offensive manner.

12. He shall not cause or allow any dog belonging to or under the control of such person to enter or remain in any part of the premises.

Penalties.

13. Every person resorting to the public wash-houses who shall offend against any of the foregoing By Laws shall be liable for every such offence to a penalty of :

Provided nevertheless, that the justices before whom any complaint may be made or any proceedings may be taken in respect of any such offence may, if they think fit, adjudge the payment, as a penalty, of any sum less than the full amount of the penalty imposed by this By Law.

(3.) BY LAWS WITH RESPECT TO PUBLIC BATHING.

For fixing the stands of bathing machines on the sea-shore or strand, and the limits within which persons of each sex shall be set down for bathing; and within which each person shall bathe.

1. The several places described or defined in the list hereunto appended shall be the stands appointed for such number of bathing machines of such class, description, or construction, and appropriated for the use of persons of such sex as shall, in respect of each of such stands, be specified in such list.

LIST OF STANDS FOR BATHING MACHINES.

Description or Limits of Stand.	Bathing Machines to be placed on Stand.		
	1. Number.	2. Class, Description, or Construction.	3. Sex to which Appropriated.
(a)	(a)	(a)	(a)

In addition to or in substitution for any of the places so appointed as stands for bathing machines, such place or places as may, from time to time hereafter, be appointed by the Sanitary Authority, and may be described or defined in a notice or notices painted, printed, or marked in legible letters and figures of such a colour, or in such a manner, as to be clearly distinguishable from the colour of the ground whereon such letters and

(a) Here insert the necessary particulars as to each stand.

figures are painted, printed, or marked, and affixed or set up and continued in some convenient and conspicuous position in or near to the place or places so appointed, shall be the stand or stands for such number of bathing machines of such class, description, or construction, and appropriated for the use of persons of such sex as shall be specified in such notice or notices.

2. A proprietor or attendant of a bathing machine, stationed on any stand or part of a stand appointed for machines for the use of persons of the female sex, shall not cause or allow any such person, who may have hired, or may use such machine for the purpose of bathing, to be set down for such purpose at any place less distant than yards from any place at which any person of the male sex above the age of years may be set down for such purpose.

3. A proprietor or attendant of a bathing machine, stationed on any stand or part of a stand appointed for machines for the use of persons of the male sex, shall not cause or allow any such person above the age of years, who may have hired, or may use such machine for the purpose of bathing, to be set down for such purpose at any place less distant than yards from any place at which any person of the female sex may be set down for such purpose.

4. A person of the female sex shall not, while bathing, approach within yards of any place at which any person of the male sex, above the age of years, may be set down for the purpose of bathing, or at which any such person may bathe.

5. A person of the male sex, above the age of years, shall not, while bathing, approach within yards of any place at which any person of the female sex may be set down for the purpose of bathing, or at which any such person may bathe.

For preventing any indecent exposure of the persons of the bathers.

6. Every proprietor or attendant of a bathing machine so constructed as to be capable of being drawn or moved to or from the station occupied by such machine on any

stand, by means of a horse or windlass, or other animal or mechanical power, shall at all times, when such machine may be hired or used by any person for the purpose of bathing, cause such machine to be drawn or moved into such a depth of water, or otherwise into such a position as will prevent any indecent exposure of any such person, when set down from such machine for the purpose of bathing or when bathing from such machine.

7. Every person of the male sex above the age of years, who may hire or use any bathing machine for the purpose of bathing, or may be set down from such machine for such purpose, shall at all times, while bathing, wear suitable drawers or other sufficient dress or covering to prevent indecent exposure of the person.

8. Every person of the female sex who may hire or use any bathing machine for the purpose of bathing, or may be set down from such machine for such purpose, shall, at all times, while bathing, wear a suitable gown or other sufficient dress or covering to prevent indecent exposure of the person.

For regulating the manner in which the bathing machines shall be used, and the charges to be made for the same.

9. Every proprietor or attendant of a bathing machine stationed on any stand, and so constructed as to be capable of being drawn or moved to or from the station occupied by such machine on such stand by means of a horse or windlass, or other animal or mechanical power, shall, at all times, when such machine shall require to be so drawn or moved, cause the same to be drawn or moved with reasonable expedition and in such a manner as to avoid any improper obstruction of the shore or strand, or any undue interference with the proper use of any other machine stationed on any part of such shore or strand.

10. A proprietor or attendant of a bathing machine stationed on any stand shall not, without reasonable excuse, at any reasonable time when such machine is not hired or in use for the purpose of bathing, neglect or refuse, upon the application of any person hiring or seeking to hire such machine for the purpose of bathing,

to cause or allow such machine to be so hired and to be drawn or moved from its station on such stand to any suitable place whereat any such person may be set down for the purpose of bathing.

11. Every proprietor or attendant of a bathing machine so constructed as to be capable of being drawn or moved by hand to or from the station occupied by such machine on any stand shall, whenever such machine may be hired or used to set down any person for the purpose of bathing from such machine, cause such machine, from time to time, as the state of the tide or other occasion may require, to be drawn or moved to such a position at such a distance from the water as to provide adequately for the safety and convenience of the person hiring or using such machine.

12. Every proprietor or attendant of a bathing machine, stationed on any stand, shall be entitled to demand and receive for the use of such machine, when hired to set down any person for the purpose of bathing, a sum not exceeding in each case the charge hereinafter prescribed :—

	<i>s.</i>	<i>d.</i>
For every machine used by any person of the male sex, above the age of years :—		
For a time not exceeding half an hour	..	
For every additional half hour or portion thereof	..	
For every machine used by any person of the female sex, above the age of years :—		
For a time not exceeding half an hour	..	
For every additional half hour or portion thereof	..	
For every machine used by any person of the female sex, above the age of years, who shall, while bathing, require the services of an attendant of such machine :—		
For a time not exceeding half an hour	..	
For every additional half hour or portion thereof	..	

For every machine used by one child under the age of years, and accompanied by an adult person not being an attendant of such machine :—

For a time not exceeding half an hour „
 For every additional half hour or portion thereof „

For every machine used by one child under the age of years, for whom, while bathing, the services of an attendant of such machine shall be required :—

For a time not exceeding half an hour „
 For every additional half hour or portion thereof „

For every machine used by two or more children, under the age of years, and accompanied by an adult person not being an attendant of such machine :—

For every such child for a time not exceeding half an hour „
 For every additional half hour or portion thereof „

For every machine used by two or more children, for whom, while bathing, the services of an attendant of such machine shall be required :—

For every such child for a time not exceeding half an hour „
 For every additional half hour or portion thereof „

The several amounts hereinbefore prescribed shall include charges for the provision by the proprietor, and the reasonable use by the bather, of the several articles specified in the following Regulations :—

1. For every person of the male sex above the age of years :—

- (a) Two clean towels ;
- (b) One clean pair of suitable drawers or other clean and sufficient covering to prevent indecent exposure of the person.

2. For every person of the female sex above the age of years :—
 - (a) Two clean towels;
 - (b) One clean gown or other clean and sufficient dress or covering to prevent indecent exposure of the person.
3. For every child under the age of years :—
 - (a) Two clean towels.

For regulating the distance at which boats and vessels let to hire for the purpose of sailing or rowing for pleasure shall be kept from persons bathing within the prescribed limits.

13. Every person in charge of any boat or vessel let to hire for the purpose of sailing or rowing for pleasure shall, at all times when so sailing or rowing, cause such boat or vessel to be kept at a distance not less than *yards* from every person bathing within the limits within which, in accordance with the By Law in that behalf, such person may be set down for the purpose of bathing or may bathe.

Provided always that this By Law shall not apply in any case in which, in consequence of actual or threatened danger to life, or of any other sufficient reason, the person in charge of such boat or vessel shall not cause such boat or vessel to be kept at the distance hereinbefore specified from any person bathing within the aforesaid limits.

Penalties.

14. Every person who shall offend against any of the foregoing By Laws shall be liable for every such offence to a penalty of :

Provided, nevertheless, that the Justices or Court before whom any complaint may be made or any proceedings may be taken in respect of any such offence may, if they think fit, adjudge the payment, as a penalty, of any sum less than the full amount of the penalty imposed by this By Law.

Saving for rights of Crown.

15. Nothing in or done under any of the provisions of the foregoing By Laws shall, in any respect, prejudice,

or injuriously affect the rights and interests of the Crown in the foreshore below high-water mark.

(4.) BY LAWS FOR THE MANAGEMENT, USE, AND
REGULATION OF AN OPEN BATHING PLACE.

For securing that the open bathing place shall be under the due management and control of the officers, servants, or others appointed or employed in that behalf by the Sanitary Authority;

For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour, and nuisances.

1. Every person resorting to the open bathing place shall, before being admitted to such bathing place, pay to the officer, servant, or person appointed or employed by the Sanitary Authority for the management and control of such bathing place the sum prescribed as the charge for the use by such person of such bathing place.

2. He shall not enter or quit such bathing place otherwise than through the door, gate, wicket, passage, or opening appointed by the Sanitary Authority as the authorized means of entrance to or egress from such bathing place.

3. He shall not, wilfully or improperly, remove or displace, or carelessly or negligently injure or destroy any wearing apparel or other articles belonging to, or in the possession of, or in use by any other person using such bathing place.

4. He shall not carelessly or negligently injure or destroy any building, erection, fence, wall, stile, or gate, or any furniture, fittings, or conveniences constructed, provided, or used in, upon, or in connection with such open bathing place.

5. He shall not, by any disorderly or improper conduct, disturb or interrupt any other person in the proper use of such bathing place, or any officer, servant, or person appointed or employed by the Sanitary Authority in the proper execution of his duty.

6. He shall not, at any time, while using such bathing place, use any indecent and offensive language, or behave in an indecent and offensive manner.

7. He shall not cause or allow any dog belonging to such person, or under his control, to enter or remain in or upon any part of such bathing place.

8. He shall not wilfully or improperly soil or defile any building, erection, fence, wall, stile, or gate, or any furniture, fittings, or conveniences constructed, provided, or used in, upon, or in connection with such bathing place, or any path, passage, or means of access to the water from such bathing place.

Penalties.

9. Every person resorting to the open bathing place, who shall offend against any of the foregoing By Laws, shall be liable for every such offence to a penalty of

Provided, nevertheless, that the Justices before whom any complaint may be made or any proceedings may be taken in respect of any such offence, may, if they think fit, adjudge the payment, as a penalty, of any sum less than the full amount of the penalty imposed by this By Law.

(5.) BY LAWS WITH RESPECT TO HACKNEY CARRIAGES.

For regulating the conduct of the proprietors and drivers of hackney carriages plying within the district in their several employments, and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling.

1. Every proprietor or driver of a hackney carriage shall, at all times, when standing, plying, or driving for hire, conduct himself in an orderly manner, and with civility and propriety towards every person seeking to hire, or hiring, or being conveyed in such carriage; and shall comply with every reasonable requirement of any person hiring or being conveyed in such carriage.

2. A driver of an open hackney carriage shall not, at

any time when driving for hire, smoke tobacco or any other like substance, without the permission of the person hiring and being conveyed in such carriage.

3. A proprietor or driver of a hackney carriage shall not, in any street, feed or allow to be fed any horse or other animal harnessed or otherwise attached to such carriage except with food contained in a proper bag, or other receptacle suspended from the head of such horse or animal, or with hay held in and delivered with the hand of the person feeding such horse or other animal.

4. A driver of a hackney carriage drawn by a horse or horses, pony or ponies, mule or mules, ass or asses, when plying for hire and not actually hired, shall not cause such carriage to loiter in any public thoroughfare.

5. A proprietor or driver of a hackney carriage, when standing or plying for hire, shall not, by calling out or otherwise, importune any person to hire such carriage to the annoyance of such person or of any other person.

6. Every driver of a hackney carriage, who shall convey any person to or from any place of public worship, amusement, or resort, or who shall for such purpose be in waiting with such carriage at or near to any such place, shall, as regards the manner of taking up or setting down any passenger, or of waiting for such purpose, comply with the directions of every constable authorized to keep order and prevent obstruction of the streets in the neighbourhood of such place.

7. Every proprietor or driver of a hackney carriage, who shall knowingly convey in such carriage the dead body of any person, shall, immediately thereafter, notify the fact to the Inspector of Nuisances.

8. Every driver of a hackney carriage of such a size and construction as to be adapted to the conveyance therein or thereon of a reasonable quantity of luggage shall, when requested by any person hiring or seeking to hire such carriage, convey therein or thereon such quantity of luggage, and shall afford all reasonable assistance in loading and unloading any such luggage conveyed in or upon such carriage, and belonging to

or in the charge of any person hiring or being conveyed in such carriage.

Every such driver shall also afford all reasonable assistance in removing such luggage to or from any door or entrance of any house, station, or place at which he may take up or set down any such person.

9. Every driver of a hackney carriage who shall have been hired by time shall, except in any case where the nature or condition of the road or any other sufficient cause may render such speed impracticable, drive such carriage at such speed as may be required by the person hiring or being conveyed in such carriage, but not exceeding in any case the rate of *four miles within one hour*.

10. Every driver of a hackney carriage drawn by a horse or horses, pony or ponies, mule, or mules, ass or asses, when plying for hire and not actually hired, shall station such carriage on some one of the stands appointed or hereafter to be appointed, by the Sanitary Authority.

Such driver shall not station such carriage on any stand which, at the time of his arrival at such stand, may be occupied by the full number of carriages authorized to occupy such stand.

Such driver, on arriving at any such stand not already occupied by the full number of carriages authorized to occupy such stand, shall station such carriage immediately in the rear of the carriage or carriages already occupying such stand, and in such a position that the head or heads of the animal or animals harnessed to such carriage shall be turned in the same direction as the head or heads of the animal or animals harnessed to any carriage stationed on such stand immediately before such last-mentioned carriage.

When a hackney carriage shall be called or driven off any stand, the driver of any carriage stationed on such stand immediately in the rear of the carriage so called or driven off shall cause the carriage so stationed to be drawn forward, so as to fill the place previously occupied by the carriage called or driven off the stand.

The drivers of the several carriages stationed on such stand in the rear of the carriage so drawn forward shall, in succession, cause their carriages to be drawn

forward, so that each carriage shall in succession fill the place which shall have been previously occupied, immediately in advance of such carriage, by a carriage drawn forward in accordance with the requirements of this By Law.

11. Every proprietor or driver of a hackney carriage who shall have agreed or shall have been hired to be in attendance with such carriage at an appointed time and place shall, in pursuance of such agreement or hiring, and unless delayed or prevented by some sufficient cause, punctually attend with such carriage at such appointed time and place.

12. Every driver of a hackney carriage, to which a lamp or lamps shall be affixed in accordance with the requirements of the By Law in that behalf, shall, at all times while standing, plying, or driving for hire, cause such lamp or lamps to be kept properly trimmed and ready for lighting.

Every such driver, while plying for hire between sunset and sunrise, when the public street lamps are required to be lighted, or at any time during the prevalence of such a fog as may render such light necessary for the safety of other vehicles or of foot passengers, shall cause such lamp or lamps to be properly lighted and to be kept lighted until such carriage shall cease to ply for hire, or until the cessation of the cause which may have rendered such light necessary.

13. Every proprietor or driver of a hackney carriage shall, immediately after the termination of any hiring, carefully search such carriage with a view to the discovery of any property which may have been accidentally left therein by any person who may have hired or may have been conveyed in such carriage.

14. A proprietor or driver of a hackney carriage, drawn by a horse or horses, pony or ponies, mule or mules, ass or asses, goat or goats, shall not, at any time while standing, plying, or driving for hire, drive or allow to be driven, or harness or allow to be harnessed for the purpose of drawing such carriage, any such animal whilst in such a condition as to expose any person conveyed or being in such carriage or any person traversing any street, to risk of injury.

15. Every driver of a hackney carriage drawn by a horse or horses, pony or ponies, mule or mules, ass or asses, goat or goats, shall, at all times while standing, plying, or driving for hire, cause every part of the harness of the animal or animals drawing such carriage to be kept in perfect order, and duly fastened and adjusted, so that such animal or animals shall be properly and securely attached to such carriage, and shall be under the due control of such driver.

16. Every driver of a hackney carriage shall, at all times when standing, plying, or driving for hire, wear attached to his outer clothing in such a position and manner as to be at all times plainly and distinctly visible, a badge consisting of a metal plate, which shall be provided by the Sanitary Authority, and shall be delivered to such driver either together with the licence granted to him by the Sanitary Authority or afterwards, and on which shall be engraved, impressed, painted, or marked in legible figures a number corresponding with the number of the licence granted to such driver, and also the words “

17. A driver of a hackney carriage shall not stand or ply for hire before the hour of A.M., or after the hour of P.M.

For regulating the manner in which the number of each carriage, corresponding with the number of its licence, shall be displayed.

18. Every proprietor of a hackney carriage shall cause the number of the licence granted to him in respect of such carriage to be painted or marked on each of two plates in figures of not less than *two inches* in height, of proportionate breadth, and of such a colour, or in such a manner, as to be clearly distinguishable from the colour or nature of the ground whereon such figures are painted or marked.

He shall cause such plates to be fixed on the outside and inside respectively of such carriage, in such a position and manner that the number thereon shall be at all times distinctly and plainly visible and legible. He shall not wilfully or negligently cause or suffer any such plate or the number on any such plate to be in any

manner or by any means concealed from public view, or to be inverted at any time while such carriage may stand, ply, or be driven for hire.

For regulating the number of persons to be carried by such hackney carriages, and what number of horses or other animals is to draw the same, and the placing of check strings to the carriages, and the holding of the same by the driver, and how such hackney carriages are to be furnished or provided.

19. Every proprietor or driver of a hackney carriage shall comply with such of the following provisions for regulating the number of persons to be carried by hackney carriages as shall be applicable to such carriage:—

No greater number of persons shall be conveyed in any carriage than will admit of the provision of adequate sitting accommodation to the extent at least of *sixteen* inches from side to side and *fifteen* inches from front to back of every seat in respect of each person conveyed in or upon such carriage, and also of adequate accommodation to enable every such person to sit with ease.

No greater number than *five* persons, exclusive of the driver, shall be conveyed in or upon any carriage drawn by one horse, or by two ponies or mules.

No greater number than *three* persons, exclusive of the driver, shall be conveyed in or upon any carriage drawn by one pony or mule or by two asses.

No greater number than *one* person, exclusive of the driver, shall be conveyed in or upon any carriage drawn by one ass.

For the purpose of the foregoing rules two children under the age of 10 years may be regarded as one person.

No greater number than *two* children shall be conveyed in or upon any carriage drawn by a goat or goats.

20. Every proprietor of a closed hackney carriage or of a hackney carriage so constructed as to be capable at any time of being closed shall, in order to enable any person in such carriage to communicate with the driver,

provide and place a proper check string in such a position as to pass through the front of such carriage into the interior, and so as to be readily accessible to any person in such carriage.

Such proprietor shall cause such check string to be kept at all times ready and fit for use, and shall renew the same from time to time as often as occasion shall require.

Every driver of a closed hackney carriage, while conveying any person in such carriage, and every driver of a hackney carriage so constructed as to be capable of being closed, while conveying any person in such carriage at any time when the same shall be closed, shall hold such check string in his hand, or shall attach the same to his arm, or to some part of his outer clothing, in such a manner as to secure to every person in such carriage adequate means of prompt communication with such driver.

21. Every proprietor of a hackney carriage shall cause the seats of such carriage to be properly cushioned or covered, and the floor of such carriage to be provided with a proper carpet, mat, or other suitable covering, or during wet weather with clean straw. He shall cause such carriage to be so furnished and fitted in all other respects as to secure cleanliness, and due provision for the safety and convenience of every person conveyed in such carriage. If such carriage be of such a size and construction as to be adapted to the conveyance therein or thereon of a reasonable quantity of luggage, he shall provide adequate means of securing such luggage while conveyed in or upon such carriage. If such carriage be a closed carriage, or be so constructed as to be capable at any time of being closed, he shall cause the roof or covering of such carriage to be made and kept water-tight. He shall provide such carriage with proper window glasses set in suitable frames, and shall renew such glasses and frames from time to time as often as occasion may require; and he shall furnish each window with a leathern strap or other suitable means of wholly or partially raising or lowering such window.

22. Every proprietor of a four-wheeled hackney carriage drawn by a horse or horses, pony or ponies,

shall provide such carriage with a sufficient drag-chain and slipper or other sufficient brake.

23. Every proprietor of a hackney carriage drawn by a horse or horses, pony or ponies, mule or mules, as or asses, shall furnish such carriage with such number of sufficient lamps, not being more than two, and so constructed and so affixed on the outside of such carriage as to afford when lighted adequate means of signalling the approach or position of such carriage.

For fixing the stands of such hackney carriages and the distance to which they may be compelled to take passengers.

24. The several places specified in the following list shall be the authorized stands for such number of hackney carriages, drawn by horses, ponies, mules, or asses, as shall in each case be specified in such list :—*

In addition to or in substitution for the places specified in the foregoing list, such places, as may from time to time be appointed by the Sanitary Authority, and may be indicated in each case by a *notice board* affixed in some conspicuous position at or near to such place and marked with the words "Stand for hackney carriages," shall be the stands authorized for such number of hackney carriages as shall in each case be specified in such *notice board*.

25. For the purposes of the By Laws relating to hackney carriages, the distance to which a hackney carriage drawn by a horse or horses, pony or ponies, mule or mules, may be compelled to take passengers shall be miles within the boundary of the district:

The distance to which a hackney carriage drawn by an ass or asses may be compelled to take passengers shall be miles within the boundary of the district:

The distance to which a hackney carriage drawn by a goat or goats may be compelled to take passengers shall be miles within the boundary of the district:

* Here append a list of stands and a statement of the number of hackney carriages authorized to occupy each of such stands.

And the distance to which a hackney carriage drawn or propelled by hand may be compelled take passengers shall be _____ miles within the boundary of the district:

For fixing the rates or fares, as well for time as distance, to be paid for such hackney carriages within the district, and for securing the due publication of such fares.

26. Every proprietor or driver of a hackney carriage plying for hire shall be entitled to demand and take for the hire of such carriage the rate or fare prescribed by the following table, and in every case, except where the carriage is drawn or propelled by hand, the hiring shall be by distance, unless the hirer express at the commencement of the hiring his desire to engage by time, in which case the same shall be determined by time.

In the case of a carriage drawn or propelled by hand the hiring shall be taken to be by time only.

FARES for TIME.

Periods of Time.	Description of Carriage.					
	Carriage drawn by two Horses.	Carriage drawn by one Horse, or by two Ponies or Mules.	Carriage drawn by one Pony or Mule, or by two Asses.	Carriage drawn by one Ass.	Carriage drawn by two Goats, or one Goat.	Carriage drawn or propelled by hand.
If the time does not exceed one hour :—	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
For the whole time						
If the time exceeds one hour :—						
For each quarter of an hour of the whole time						
For any period of less than 15 minutes which is over and above any number of periods of 15 minutes completed						

FARES for DISTANCE.

Distance.	Description of Carriage.				
	Carriage drawn by two Horses.	Carriage drawn by one Horse, or by two Ponies or Mules.	Carriage drawn by one Pony or Mule, or by two Asses.	Carriage drawn by one Ass.	Carriage drawn by two Hinds or one Hind.
	s. d.	s. d.	s. d.	s. d.	s. d.
If the distance does not exceed one mile:—					
For the whole distance, ...					
If the distance exceeds one mile:—					
For each mile of the whole distance					
For any part of a mile over and above any number of miles completed					

27. Every proprietor of a hackney carriage plying for hire and drawn by a horse or horses, pony or ponies, mule or mules, ass or asses, shall cause a statement of the fares authorized by any By Law in that behalf to be demanded and received in respect of the hiring of such carriage to be printed or painted on a suitable plate in legible letters and figures of such a colour as to be clearly distinguishable from the colour of the ground whereon such letters and figures are printed or painted.

He shall cause such plate to be fixed, in the case of a four-wheeled carriage, on the inside, and in the case of a two-wheeled carriage, on the inside of the splash board of such carriage or otherwise in such a position and manner that the letters and figures on such plate shall be at all times distinctly and plainly visible and legible to any person being conveyed in such carriage.

Such proprietor shall, from time to time, as often as occasion may require, renew such plate or the letters and figures on such plate, and he shall not, nor shall any driver of such carriage, wilfully or negligently

cause or suffer such plate to be inverted or detached, or the letters or figures on such plate to be in any manner or by any means concealed from the view of any person being conveyed in such carriage at any time while such carriage may ply or be used for hire.

For securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof.

28. Every proprietor or driver of a hackney carriage wherein any property shall be accidentally left by any person who may have hired, or may have been conveyed in such carriage shall, if such property be found by such proprietor or driver, within twenty-four hours of such finding, carry the same, if not sooner claimed by or on behalf of the owner thereof, in the state in which the same shall have been found, to the office of the Sanitary Authority, and shall there deposit and leave such property in the custody of the officer in charge of such office.

In the event of the re-delivery of such property to any person who shall satisfactorily prove that the same belongs to him, the proprietor or driver, by whom such property may have been found and carried to the office of the Sanitary Authority and there deposited, shall be entitled to demand and receive from the person to whom such property shall have been re-delivered an amount to be determined in accordance with the following regulations :

If the estimated value of the property be less than *five pounds*, or if the property be of such a character that the value thereof cannot readily be estimated, such proprietor or driver shall be entitled to demand and receive from such person an amount equal to the amount payable to such proprietor or driver as a fare for the hiring of his carriage for such time as may have been occupied by him in carrying the property from the place at which the same may have been found in his carriage to the office of the Sanitary Authority :

If the estimated value of the property be more than

five pounds, such proprietor or driver shall be entitled to demand and receive from such person an amount equal to *a shilling* in the pound on the estimated value of the property: Provided that in no case shall such proprietor or driver be entitled to demand or receive a greater amount than *pounds*.

Penalties.

29. Every proprietor or driver of a hackney carriage who shall offend against any of the foregoing By Laws shall be liable for every such offence to a penalty of _____, and in the case of a continuing offence to a further penalty of _____ for each day after written notice of the offence from the Sanitary Authority:

Provided, nevertheless, that the justices or court before whom any complaint may be made or any proceedings may be taken in respect of any such offence, may, if they think fit, adjudge the payment, as a penalty, of any sum less than the full amount of the penalty imposed by this By Law.

(6.) BY LAWS WITH RESPECT TO A MARKET.

For regulating the use of the market place and the buildings, stalls, pens, and standings therein, and for preventing nuisances or obstructions therein, or in the immediate approaches thereto.

1. A person resorting to the market place for the sale of any cattle, goods, provisions, marketable commodities or articles shall not, for the purpose of sale or of exposure for sale, place or cause to be placed such cattle, goods, provisions, marketable commodities or articles in any part or parts of the market place other than such as shall have been appropriated for the

reception, deposit, or exposure for sale of the same, and shall be defined or described in a notice printed, painted, or marked in legible letters of such a colour as to be clearly distinguishable from the colour of the ground whereon such letters are printed, painted, or marked, and affixed or set up and continued in some suitable and conspicuous position at or near to such part or parts.

2. He shall not, for the purpose of sale or of exposure for sale, bring the same or cause the same to be brought into such market place before the hour of in the forenoon of any day appointed for the holding of any market.

3. He shall not allow such goods, provisions, marketable commodities or articles, or any part thereof, to remain in the market place after the hour of in the afternoon of any day appointed for the holding of any market.

4. Every tenant or occupier, or servant of a tenant or occupier of any building, stall, or standing in the market place shall, before the hour of in the afternoon of every day during which such building, stall, or standing may have been used for the sale or exposure for sale of any goods, provisions, marketable commodities, or articles, extinguish or cause to be extinguish every fire or light in, upon, or in connection with such building, stall, or standing.

5. A tenant or occupier, or a servant of a tenant or occupier of any building, stall, or standing in the market place used for the sale, or exposure or preparation for sale, of any carcass or meat intended for the food of man, shall not cleave such carcass or meat elsewhere than upon a cleaving block, or chopping board, or otherwise than when properly attached to or suspended from the hooks provided for the purpose in, upon, or in connection with such building, stall, or standing.

6. A person who shall use any pen for the reception of any cattle brought into the market place for the purpose of sale, or of exposure for sale, shall not place, or allow to be placed, in such pen a greater number of cattle than shall be compatible with the allowance in respect of the several animals placed in such pen of an

extent of superficial space * to be determined in accordance with the following regulations :—

	ft.	in.		ft.	in.
For every horse :—					
a space not less than ..	..	..	by	..	..
For every ox or cow :—					
a space not less than ..	..	..	by	..	..
For every mule or ass :—					
a space not less than ..	..	..	by	..	..
For every calf :—					
a space not less than ..	..	..	by	..	..
For every ram, ewe, wether,					
lamb, goat, kid, or pig :—					
a space not less than ..	..	..	by	..	..

7. A tenant or occupier of any building, stall, or standing in the market place, shall not cause or allow any goods, provisions, marketable commodities, or articles to be deposited or exposed for sale in or upon such building, stall, or standing, so that such goods, provisions, marketable commodities, or articles, or any part thereof, shall project beyond the line of such building or stall, or beyond the limits assigned to such standing, so as to obstruct the passage of any person or vehicle, or of any cattle, goods, provisions, marketable commodities, or articles, in or through the market place or any part thereof.

8. A tenant or occupier of any building, stall, or standing in the market place, or a person resorting to such market place for the sale of any goods, provisions, marketable commodities, or articles, shall not for any longer time or in any other manner than shall be reasonably necessary for the conveyance of such goods, provisions, marketable commodities, or articles, to or from such building, stall, or standing, or any part of such market place, deposit, or cause, or allow to be deposited in any avenue or passage adjoining such build-

* The following requirements have been suggested as generally suitable :—

For every horse, 8 feet by 2 feet. For every ox or cow, 8 feet by 2 feet.

For every mule or ass, 5 feet by 15 inches. For every calf, 5 feet by 15 inches.

For every sheep, goat, or pig (of medium size), 4 feet (superficial).

ing, stall, or standing, or elsewhere in such market place, or in any of the immediate approaches thereto, any hamper, crate, basket, box, barrel, or other receptacle for any goods brought into such market place for the purpose of sale or exposure for sale.

9. Every tenant or occupier of any building, stall, or standing in the market place, shall cause such building, stall, or standing to be properly cleansed immediately before the reception, deposit, or exposure for sale therein or thereon and immediately after the removal therefrom of any goods, provisions, marketable commodities or articles.

10. He shall, from time to time, as often as occasion may require, during any day on which such building, stall, or standing may be used for the reception, deposit, or exposure for sale therein or thereon of any goods, provisions, marketable commodities or articles, cause all filth, garbage, and refuse which may be produced or may accumulate in the course of the trade or business carried on by such tenant or occupier, to be placed in such receptacle (if any) as may be provided by the Sanitary Authority, or otherwise in a receptacle of suitable construction and of adequate dimensions to be provided by such tenant or occupier, in, upon, or in close connection with such building, stall, or standing.

He shall, from time to time, as often as may be necessary, cause the contents of such receptacle to be promptly removed, in such a manner and with such precautions as not to create a nuisance in the process of removal, to such place of deposit as shall, from time to time, be appointed by the Sanitary Authority, and shall be defined or described in a notice printed, painted, or marked in legible letters of such a colour as to be clearly distinguishable from the colour of the ground whereon such letters are printed, painted, or marked, and affixed or set up and continued in some suitable and conspicuous position at or near to such place of deposit.

11. A person resorting to the market place and being in charge of any waggon, cart, truck, barrow, or other vehicle, or of any beast of burden, shall not cause or allow such vehicle or beast to stand in any avenue or

passage in such market place, or in any of the immediate approaches thereto, for any longer time than shall be reasonably necessary for the loading or unloading of any goods, provisions, marketable commodities or articles.

12. Every person resorting to the market place for the sale of any goods, provisions, marketable commodities, or articles, or in charge of any waggon, cart, truck, barrow, or other vehicle, or of any beast of burden used for the conveyance of any goods, provisions, marketable commodities, or articles, to or from such market place shall, from time to time, as often as occasion may require, and in such a manner as to prevent nuisance or obstruction, remove or cause to be removed from every avenue or passage in such market place, or from the footway or roadway of any of the immediate approaches thereto, all vegetable or animal refuse, filth, litter, or rubbish which may have fallen or may have been thrown or deposited therein or thereon during the loading or unloading or the conveyance to or from such market place of such goods, provisions, marketable commodities, or articles.

13. Every tenant or occupier of any building, stall, or standing in the market place shall cause every avenue or passage in connection with such building, stall, or standing, whether used by him alone or in conjunction with any other person, to be properly swept and cleansed once at least during each day appointed for the holding of the market.

14. A person resorting to the market place for the sale of any cattle, goods, provisions, marketable commodities, or articles, shall not cause or allow such cattle, goods, provisions, marketable commodities or articles to be brought or conveyed to or from such market place, or any building, stall, or standing therein, or to stand, be placed, or exposed for sale in such a manner as to obstruct the passage of any person or vehicle, or of any other cattle, goods, provisions, marketable commodities or articles in or through such market place, or any part thereof, or any of the immediate approaches thereto.

For fixing the days and the hours during each day on which the market shall be held.

15. A market ^(a)
shall be held on ^(b) in every ^(c)
throughout the year ^(d)

On every day appointed for the holding of a market such market shall be held between the hours of

in the forenoon and in the afternoon :

Provided that when any day hereinbefore appointed for the holding of a market shall be a day duly appointed for a solemn fast, or public thanksgiving, such market shall be held on the lawful day next following such first-mentioned day.

For regulating the carriers resorting to the market, and fixing the rates for carrying articles carried therefrom within the limits of the district.

16. A carrier resorting to the market place shall not, at any time, while plying for hire and not actually hired, occupy a station in any part or parts of the market place other than such as shall be appropriated as a *stand* or stands for *carriers*, and shall be defined or described in a notice printed, painted, or marked in legible letters of such colour as to be clearly distinguishable from the colour of the ground whereon such letters are printed, painted, or marked, and affixed, or set, up, and continued in some suitable and conspicuous position at or near to the part or parts so appropriated.

17. He shall not, while plying for hire, canvass for hire by calling out or otherwise to the annoyance of any person.

18. He shall, at all times, while plying for hire, conduct himself with civility and propriety towards every person hiring or seeking to hire such carrier, and shall

(a) Here specify the class or description of wares for which the market is intended.

(b) Here insert the day of the week.

(c) Here insert "week," "fortnight," "month," "quarter," as the case may require.

(d) If the markets are not held periodically throughout the year, substitute the names of the months during which they are held.

comply with every reasonable requirement of any person hiring such carrier.

19. He shall be entitled to demand and receive from every person hiring such carrier a sum to be determined in accordance with the following table, as the rate or charge for the carriage of any goods, provisions, marketable commodities, or articles, from such market place to any place or places within the limits of the district :—

TABLE of RATES for the CARRIAGE of GOODS, PROVISIONS, MARKETABLE COMMODITIES, or ARTICLES from the MARKET PLACE.

Distance.	Weight.	Rate.
		s. d.
To any place within the distance of from the limits of the market place	For a weight not exceeding lbs. }	..
	For every additional lbs. }	..
To any place beyond the distance of and within the distance of from the limits of the market place ..	For a weight not exceeding lbs. }	..
	For every additional lbs. }	..
For every additional of distance beyond such last-mentioned distance	For a weight not exceeding lbs. }	..
	For every additional lbs. }	..

Penalties.

20. Every person who shall offend against any of the foregoing By Laws shall be liable for every such offence to a penalty of :

Provided, nevertheless, that the justices or court before whom any complaint may be made or any proceedings may be taken in respect of any such offence may, if they think fit, adjudge the payment, as a penalty, of any sum less than the full amount of the penalty imposed by this By Law.

(7.) BY LAWS FOR SECURING THE DECENT LODGING AND ACCOMMODATION OF PERSONS ENGAGED IN HOP-PICKING.

We, the
do make and ordain the following By Laws for regulating the decent lodging and accommodation of persons engaged in *hop-picking* in the district:—

I.—The following By Laws shall be applicable to all tents, sheds, barns, hopper-houses, buildings, or other habitations appropriated and used, from time to time, for the lodging of persons engaged in *hop-picking*: Habitations to which By Laws apply.

Provided that the By Laws shall not extend to any building occupied as a dwelling-house, or for human habitation, from time to time, throughout the year.

II.—Every person using any such habitation for the lodging of persons engaged in *hop-picking* shall cause it to be constructed and maintained so that it may be thoroughly clean, dry, and weatherproof at all times when used for the lodging of such persons. Construction, ventilation, and lighting, of habitations.

He shall cause such habitation in every case to be properly ventilated, and, where practicable, sufficiently lighted.

III.—No such person shall cause or allow a greater number of adult persons to be received into any such habitation, or any room therein, at any one time, for the purpose of sleeping therein, than may be compatible with the allowance of 16 square feet at the least of available floor space in respect of each adult person. Allowance of floor space.

For the purpose of the foregoing provision two children under 10 years of age may be counted as one adult.

IV.—Every such person shall cause every room or part of such habitation, which may be appropriated for the reception of adult persons of different sexes, to be so furnished or provided that every bed shall be properly separated from any adjoining bed by a suitable screen or partition, of such material, construction, and size as to secure adequate privacy to the occupant or occupants of such bed. Provision of screens for beds.

V.—He shall provide in a safe and suitable position in, or in connection with, or adjacent to such habitation, Cooking-houses.

a suitable cooking-house, or other place, properly covered or sheltered, in which fires may be safely and readily lighted, and food may be properly cooked, and clothes and other articles may be properly dried.

He shall cause such cooking-house or place to be so constructed that for every 15 persons authorized to be received in such habitation a separate fireplace or separate accommodation for the cooking of food, and the drying of clothes and other articles, may be provided.

Water-supply.

VI.—He shall (where the same is not otherwise readily available) provide in or upon or in connection with such habitation, or in some suitable place readily accessible therefrom, such a supply of good and wholesome water as will, at all times, suffice for the reasonable requirements, whether for drinking, cooking, washing, or other purposes, of the several persons received and lodged in such habitation.

Bedding

VII.—He shall provide for every person received and lodged in such habitation a sufficient supply of clean dry straw, or other clean, dry, and suitable bedding. He shall cause such straw or other bedding to be changed or properly cleansed, from time to time, as often as occasion may require.

Cleansing of
habitations and
removal of
filth.

VIII.—He shall cause every part of the interior of such habitation, and of any cooking-house, privy, or other premises in connection therewith, to be thoroughly cleansed immediately before any person shall be received to lodge therein, and from time to time, as occasion may require, while the lodgers are retained therein.

He shall cause the walls and ceilings of every room constructed of brick, stone, iron, concrete, wood, earth, or plaster to be well and sufficiently lime-washed at least once in every year, and he shall, from time to time, cause all accumulations or deposits of filth or any offensive or noxious matter to be removed from such habitation or premises, and from the land immediately surrounding such habitation or premises or adjoining thereunto.

Privies.

IX.—He shall provide, in a suitable position in connection with such habitation, a sufficient number of privies, properly constructed, for the separate use of each sex.

Penalties.

X.—Every person offending against any of these By

Laws shall for every such offence be liable to a penalty of 5*l.* and in the case of a continuing offence a further penalty of 10*s.* for every day during which the offence shall continue after notice in writing from the Sanitary Authority.

Provided, nevertheless, that the Justices or Court before whom any complaint may be made for a breach of any of the foregoing By Laws may, if they see fit, reduce the amount of penalty herein prescribed as they may deem advisable.

(8.) BY LAWS WITH RESPECT TO THE CLEANSING
OF FOOTWAYS AND PAVEMENTS;
THE REMOVAL OF HOUSE REFUSE;
THE CLEANSING OF EARTH CLOSETS, PRIVIES, ASH-
PITS, AND CESSPOOLS.

*The Cleansing of Footways and Pavements adjoining any
Premises.*

1. The occupier of any premises fronting, adjoining, or abutting on any street shall once at least in *every day*, Sundays excepted, cleanse the footways and pavements adjoining such premises.

The Removal of House Refuse from any Premises.

2. The occupier of any premises shall once at least in *every week* remove the house refuse from such premises.

*The Cleansing of Earth Closets, Privies, Ashpits, and
Cesspools belonging to any premises.*

3. The occupier of any premises shall once at least in *every three months* cleanse every earth closet, belonging to such premises and furnished with a fixed receptacle for faecal matter and with suitable means or apparatus for the frequent and effectual application of dry earth to such matter.

4. He shall once at least in *every week* cleanse every earth closet belong to such premises and furnished with a movable receptacle for faecal matter and with suitable

means or apparatus for the frequent and effectual application of dry earth to such matter.

5. He shall once at least in *every week* cleanse every privy belonging to such premises and furnished with a fixed receptacle for faecal matter.

6. He shall once at least in *every week* cleanse every privy belonging to such premises and furnished with a movable receptacle for faecal matter.

7. He shall once at least in *every week* cleanse every ash-pit belonging to such premises and used only as a receptacle for ashes, dust, and dry refuse.

8. He shall once at least in *every week* cleanse every ash-pit belong to such premises and used in connection with a privy as a receptacle for faecal matter, together with ashes, dust, and dry refuse.

9. He shall once at least in every *three months* cleanse every cesspool belonging to such premises.

10. Every person who shall offend against any of the foregoing By Laws shall be liable for every such offence to a penalty of :

Provided, nevertheless, that the justices or court before whom any complaint may be made or any proceedings may be taken in respect of any such offence may, if they think fit, adjudge the payment as a penalty of any sum less than the full amount of the penalty imposed by this By Law.

(9.) BY LAWS WITH RESPECT TO NUISANCES.

For the prevention of nuisances arising from snow, filth, dust, ashes and rubbish, and for the prevention of the keeping of animals on any premises so as to be injurious to health.

1. The occupier of any premises fronting, adjoining, or abutting on any street shall, as soon as conveniently may be after the cessation of any fall of *snow*, remove or cause to be removed from the footways and pavements adjoining such premises all *snow* fallen or accumulated on such footways and pavements in such a manner and with such precautions as will prevent

any undue accumulation in any channel or carriage-way or upon any paved crossing.

2. Every person who shall remove any snow from any premises shall deposit the same in such a manner and with such precautions as to prevent any undue accumulation thereof in any channel or carriage-way or upon any paved crossing.

If in the process of such removal any snow be deposited upon any footway or pavement, he shall forthwith remove such snow from such footway or pavement.

3. Every person who, for the purpose of facilitating the removal of any snow from any footway or pavement, shall throw salt upon such snow, shall forthwith effectually remove from such footway or pavement the whole of the deposit resulting from the mixture of the salt with the snow.

4. The occupier of any premises who shall remove or cause to be removed any filth, dust, ashes, or rubbish produced upon his premises, shall not, in the process of removal, deposit such filth, dust, ashes, or rubbish, or cause or allow such filth, dust, ashes, or rubbish to be deposited upon any footway, pavement, or carriage-way.

For the purpose of such removal, he shall in every case use or cause to be used a suitable vessel or receptacle, cart, or carriage, properly constructed and furnished with a sufficient covering so as to prevent the escape of the contents thereof.

If in the process of such removal any person shall slop or spill or cause or allow to fall upon any footway, pavement or carriageway any such filth, dust, ashes, or rubbish, he shall forthwith remove such filth, dust, ashes, or rubbish from the place whereon the same may have been slopped or spilled or may have fallen, and shall immediately thereafter thoroughly sweep or otherwise thoroughly cleanse such place.

5. Every person who, for the purpose of depositing any filth, dust, ashes, or rubbish upon any lands or premises, or for the purpose of depositing any dust, ashes, or rubbish in any receptacle provided by the Sanitary Authority for the temporary deposit and collection of dust, ashes, and rubbish, shall remove such

such filth, dust, or rubbish from any premises, or from any cart, carriage, or other means of conveyance across or along any highway, pavement, or carriage-way, shall be a sufficient vessel or receptacle properly constructed and furnished with a sufficient covering so as to prevent the escape of the contents thereof: and shall adopt such other precautions as may be necessary to prevent any such filth, dust, or rubbish from being slopped or spilled or falling in the process of removal upon any highway, pavement, or carriage-way.

In the event of such removal, any such filth, dust, or rubbish should be slopped or spilled or fall upon such highway, pavement, or carriage-way, he shall forthwith remove such filth, dust, or rubbish from the place whereon the same may have been slopped or spilled or may have fallen, and shall immediately thereafter thoroughly sweep or otherwise thoroughly cleanse such place.

Any person who shall convey any filth, dust, or rubbish through or along any street shall use a cart, carriage, or other means of conveyance properly constructed and furnished with a sufficient covering so as to prevent the escape of the contents thereof.

In the process of such conveyance any such filth, dust, or rubbish should be slopped or spilled, or fall upon any highway, pavement, or carriage-way or elsewhere in such street, he shall immediately remove such filth, dust, or rubbish from the place whereon the same may have been slopped or spilled or may have fallen, and shall immediately thereafter thoroughly sweep or otherwise thoroughly cleanse such place.

The owner or consignee of any cargo, load, or article of merchandise which may have been conveyed, by water or by land, to any place within the district to any removal from such place, by such owner or consignee, and may have been deposited to await such removal upon any premises whereon such filth may lawfully be deposited, but in such a situation and in such a manner that such filth may be exposed without adequate means of preventing the emission of stench therefrom at a distance of not more than ^{yards} from any street or from any building or premises used

wholly or partly for human habitation, or as a school, or as a place of public worship, or of public resort or public assembly, or from any building or premises in or on which any person may be employed in any manufacture, trade, or business, shall not, without reasonable excuse, cause or suffer such filth to remain after the deposit and before the removal thereof for a longer period than *hours*.

8. Every person who may have undertaken to deliver to the owner or consignee thereof any cargo, load, or collection of filth which may have been conveyed, by water or by land, to any place within the district, for the purpose of being delivered by such person to such owner or consignee, and may have been deposited to await such delivery upon any premises whereon such filth may lawfully be deposited, but in such a situation and in such a manner that such filth may be exposed without adequate means of preventing the emission of stench therefrom at a distance of not more than *yards* from any street or from any building or premises used wholly or partly for human habitation, or as a school, or as a place of public worship, or of public resort or public assembly, or from any building or premises in or on which any person may be employed in any manufacture, trade, or business, shall not, without reasonable excuse, cause or suffer such filth to remain after the deposit and before the removal thereof for a period of more than *hours*.

9. Every person who, for any purpose of agriculture, shall deposit or cause to be deposited upon any lands or premises within the distance of *yards* from any street, or from any building or premises used, wholly or partly, for human habitation, or as a school, or as a place of public worship, or of public resort or public assembly, or from any building or premises in or on which any person may be employed in any manufacture, trade, or business, any filth which may have been removed from any cesspool, or any filth which may have been removed from any privy, or from any receptacle used in connection with any privy, and which may not have been effectually deodorized, shall, with all reasonable despatch, cause such filth to be ploughed or

dug into the ground, or to be covered with a sufficient layer of earth, ashes, or other suitable substance, or shall adopt such other precautions as may be reasonably necessary to prevent the emission of noxious or offensive effluvia from such filth.

10. The occupier of any premises shall not keep any swine or deposit any swine's dung within the distance of *feet* from any dwelling-house, or in such a situation or in such a manner as to pollute any water supplied for use or used or likely to be used by man for drinking or domestic purposes or for manufacturing drinks for the use of man, or any water used or likely to be used in any dairy.

11. He shall not keep any cattle or deposit the dung of any cattle in such a situation or in such a manner as to pollute any water supplied for use, or used, or likely to be used by man for drinking or domestic purposes or for manufacturing drinks for the use of man, or any water used or likely to be used in any dairy.

12. Every occupier of a building or premises wherein or whereon any horse or other beast of draught or burden or any cattle or swine may be kept, shall provide, in connection with such building or premises, a suitable receptacle for dung, manure, soil, filth, or other offensive or noxious matter which may, from time to time, be produced in the keeping of any such animal in such building or upon such premises.

He shall cause such receptacle to be constructed so that the bottom or floor thereof shall not in any case be lower than the surface of the ground adjoining such receptacle.

He shall also cause such receptacle to be constructed in such a manner and of such materials and to be maintained at all times in such a condition as to prevent any escape of the contents thereof, or any soakage therefrom into the ground or into the wall of any building.

He shall cause such receptacle to be furnished with a suitable cover, and, when not required to be open, to be kept properly covered.

He shall likewise provide in connection with such building or premises a sufficient drain constructed in such a manner and of such materials and maintained at

all times in such condition as effectually to convey all urine or liquid filth or refuse therefrom into a sewer, cesspool, or other proper receptacle.

He shall, once at least in *every week*, remove or cause to be removed from the receptacle provided in accordance with the requirements of this By Law all dung, manure, soil, filth, or other offensive or noxious matter produced in or upon such building or premises and deposited in such receptacle.

13. Every person who shall offend against any of the foregoing By Laws shall be liable for every such offence to a penalty of _____, and in the case of a continuing offence to a further penalty of _____

for each day after written notice of the offence from the Sanitary Authority :

Provided, nevertheless, that the justices or court before whom any complaint may be made or any proceedings may be taken in respect of any such offence may, if they think fit, adjudge the payment as a penalty of any sum less than the full amount of the penalty imposed by this By Law.

(10.) BY LAWS WITH RESPECT TO NEW STREETS AND BUILDINGS.

Interpretation of terms.

1. In the construction of the By Laws relating to *new streets and buildings*, the following words and expressions shall have the meanings hereinafter respectively assigned to them, unless such meanings be repugnant to or inconsistent with the context or subject matter in which such words or expressions occur ; that is to say—

“Base” applied to a wall means the under side of the course immediately above the footings :

“Topmost storey” means the uppermost storey in a building, whether constructed wholly or partly in the roof or not, and whether used or constructed or adapted for human habitation or not :

"Party wall" means:—

(a.) A wall forming part of a building and being used or constructed to be used in any part of the height or length of such wall for separation of adjoining buildings belonging to different owners, or occupied or constructed or adapted to be occupied by different persons; or

(b.) A wall forming part of a building and standing, in any part of the length of such wall, to a greater extent than the projection of the footings on one side on grounds of different owners:

"External wall" means an outer wall of a building not being a party wall, even though adjoining to a wall of another building:

"Public building" means a building used or constructed or adapted to be used, either ordinarily or occasionally, as a church, chapel, or other place of public worship, or as a hospital, workhouse, college, school (not being merely a dwelling-house so used), theatre, public hall, public concert room, public ball-room, public lecture room, or public exhibition room, or as a public place of assembly for persons admitted thereto by tickets or otherwise, or used or constructed or adapted to be used, either ordinarily or occasionally, for any other public purpose:

"Building of the warehouse class" means a warehouse, factory, manufactory, brewery, or distillery:

"Domestic building" means a dwelling-house, or an office building, or other out building appurtenant to a dwelling-house, whether attached thereto or not, or a shop, or any other building not being a public building, or of the warehouse class:

"Dwelling-house" means a building used or constructed or adapted to be used wholly or principally for human habitation:

"Width," applied to a new street, means the whole extent of space intended to be used, or laid out so as to admit of being used as a public way, exclusive of any steps or projections therein, and measured at right angles to the course or direction or intended course or direction of such street.

Exempted buildings.

2. The following buildings shall be exempt from the operation of the By Laws relating to new streets and buildings:—

(a.) Any building in Her Majesty's possession, or employed or intended to be employed for Her Majesty's use or service :

(b.) Any county or borough lunatic asylum, any sessions house, or any other public building belonging to or wholly and permanently occupied by the justices of the peace of the county, city, or borough in which such asylum, sessions house, or other public building may be situated or may be erected :

(c.) Any gaol, house of correction, bridewell, penitentiary, or other prison, and any building occupied or intended to be occupied by any prison officer for the use of such prison and contiguous thereto :

(d.) Any building (not being a dwelling-house) belonging to any person or body of persons authorized by virtue of any Act of Parliament to navigate on or use any river, canal, dock, harbour, or basin, or to demand any tolls or dues in respect of the navigation of such river or canal, or the use of such dock, harbour, or basin, and used or intended to be used exclusively under the provisions of such Act of Parliament for the purposes of such river, canal, dock, harbour, or basin :

(e.) Any building (not being a dwelling-house) erected or intended to be erected in connection with any mine, and used or intended to be used exclusively for the working of such mine :

(f.) Any building erected or intended to be erected under the Improvement of Land Act, 1864, or other Act for the improvement of land administered by the Enclosure Commissioners for England and Wales :

(g.) Any building which may not be exempt by the operation of any of the preceding clauses of this By Law, and which may be erected or may be intended to be erected in accordance with such plan and in such manner as may be approved or directed in pursuance of any statutory provision in that behalf by one of Her Majesty's Principal Secretaries of State :

(h.) Any building erected and used, or intended to be erected and used, exclusively for the purpose of a plant-house, orchard-house, summer-house, poultry-house, or aviary, which shall be wholly detached, and at a distance of *ten feet* at the least from any other building, and which shall not be heated otherwise than by hot water, and in which the fireplaces (if any) shall be detached with no flues of any kind within such plant-house, orchard-house, summer-house, poultry-house, or aviary :

(i.) Any building which shall not exceed in height *thirty feet* as measured from the footings of the walls, and shall not exceed in extent *one hundred and twenty-five thousand cubic feet*, and shall not be a public building, and shall not be constructed or adapted to be used either wholly or partly for human habitation, or as a place for habitual employment for any person in any manufacture, trade, or business, and shall be distant at least *eight feet* from the nearest street, and at least *thirty feet* from the nearest building and from the boundary of any adjoining lands or premises :

(j.) Any building which shall exceed in height *thirty feet* as measured from the footings of the walls, and shall exceed in extent *one hundred and twenty-five thousand cubic feet*, and shall not be a public building, and shall not be constructed or adapted to be used either wholly or partly for human habitation, or as a place of habitual employment for any person in any manufacture, trade, or business, and shall be distant at least *thirty feet* from the nearest street, and at least *sixty feet* from the nearest building and from the boundary of any adjoining lands or premises :

(k.) Any building erected or intended to be erected for use solely as a temporary hospital for the reception and treatment of persons suffering from any dangerous infectious disorder.

With respect to the level of new streets.

3. Every person who shall lay out a new street shall lay out such street at such level as will afford the easiest practicable gradients throughout the entire length of

such street, for the purpose of securing easy and convenient means of communication with any other street or intended street with which such new street may be connected or may be intended to be connected, and as will allow of compliance with the provisions of any statute or By Law in force within the district for the regulation of new streets and buildings.

With respect to the width and construction of new streets.

4. Every person who shall lay out a new street which shall be intended for use as a carriage-road shall so lay out such street that the width thereof shall be *thirty-six feet* at the least.

5. Every person who shall construct a new street which shall exceed *one hundred feet* in length shall construct such street for use as a carriage-road, and shall, as regards such street, comply with the requirements of every By Law relating to a new street intended for use as a carriage-road.

6. Every person who shall lay out a new street which shall be intended for use otherwise than as a carriage-road, and shall not exceed in length *one hundred feet*, shall so lay out such street that the width thereof shall be *twenty-four feet* at the least:

Provided always, that this By Law shall not apply in any case where a new street shall not be intended to form the principal approach or means of access to any building, but shall be intended for use solely as a separate means of access to any premises, for the purpose of removing therefrom the contents of the receptacle of any privy, or of any ashpit, or of any cesspool without carrying such contents through any dwelling-house or public building or any building in which any person may be or may be intended to be employed in any manufacture, trade, or business.

7. Every person who shall construct a new street for use as a carriage-road shall comply with the following requirements:—

(a.) He shall construct the carriage-way of such street so that the width thereof shall be *twenty-four feet* at the least.

(b.) He shall construct the surface of the carriage-way of such street so as to curve or fall from the centre or crown of such carriage-way to the channels at the sides thereof; the height of the crown of such carriage-way above the level of the side channels being calculated at the rate of not less than *three-eighths of an inch* and not more than *three-fourths of an inch* for every foot of the width of such carriage-way.

(c.) He shall construct on each side of such street a footway of a width not less than *one-sixth* of the entire width of such street.

(d.) He shall construct each footway in such street so as to slope or fall towards the kerb or outer edge at the rate of *one-half of an inch* in every foot of width, if the footway be not paved, flagged, or asphalted; and at the rate of not less than a *quarter of an inch* and not more than *one-half of an inch* in every foot of width, if the footway be paved, flagged, or asphalted.

(e.) He shall construct each footway in such street so that the height of the kerb or outer edge of such footway above the channel of the carriage-way (except in the case of crossings paved or otherwise formed for the use of foot passengers) shall be not less than *three inches* at the highest part of such channel and not more than *seven inches* at the lowest part of such channel.

8. He shall provide at one end, at least, of such street an entrance of a width equal to the width of such street, and open from the ground upwards.

With respect to the structure of walls, foundations, roofs, and chimneys of new buildings for securing stability and the prevention of fires, and for purposes of health.

9. A person who shall erect a new building shall not construct any foundation of such building upon any site which shall have been filled up with any material impregnated with faecal matter or impregnated with any animal or vegetable matter, or upon which any such matter may have been deposited, unless and until such matter shall have been properly removed, by excavation or otherwise, from such site.

10. Every person who shall erect a new domestic

building shall cause the whole ground surface or site of such building to be properly asphalted or covered with a layer of good cement concrete, rammed solid, at least *six inches* thick.

11. Every person who shall erect a new building shall cause such building to be enclosed with walls constructed of good bricks, stone, or other hard and incombustible materials, properly bonded and solidly put together:—

(a.) With good mortar compounded of good lime and clean sharp sand, or other suitable material; or

(b.) With good cement; or

(c.) With good cement mixed with clean sharp sand.

12. He shall construct every cross wall, which, in pursuance of the By Law in that behalf, may, as a return wall, be deemed a means of determining the length of any external wall or party wall of such building, of good bricks, stone, or other hard and incombustible materials properly bonded and solidly put together:—

(a.) With good mortar compounded of good lime and clean sharp sand, or other suitable material; or

(b.) With good cement; or

(c.) With good cement mixed with clean sharp sand.

13. He shall not construct any wall of such building so that any part of such wall, not being a projection intended solely for the purpose of architectural ornament, or a properly constructed corbel, shall overhang any part beneath it.

14. He shall cause every wall of such building which may be built at an angle with another wall to be properly bonded therewith.

15. He shall construct every wall of such building so as to rest upon proper footings.

He shall cause the projection at the widest part of the footings of every wall, on each side of such wall, to be at least equal to *one-half* of the thickness of such wall at its base, unless an adjoining wall interferes, in which case the projection may be omitted where that wall adjoins.

He shall also cause the diminution of the footings to be in regular offsets, or in one offset at the top of the

footings, and he shall cause the height from the bottom of the footings to the base of the wall to be at least equal to *two-thirds* of the thickness of the wall at its base.

16. He shall cause the footings of every wall of such building to rest on the solid ground, or upon a sufficient thickness of good concrete, or upon some solid and sufficient sub-structure, as a foundation.

17. He shall cause every wall of such building to have a proper damp course of sheet lead, asphalt, or slates laid in cement, or of other durable material impervious to moisture, beneath the level of the lowest timbers, and at a height of not less than *six inches* above the surface of the ground adjoining such wall.

18. For the purposes of the By Laws with respect to the *structure of walls* of new buildings, the *measurement of height of storeys* and of *height and length of walls* shall be determined by the following rules:—

(i.) The height of storeys shall be measured as follows:—

(a.) The height of a topmost storey shall be measured from the level of the upper surface of the floor up to the level of the under side of the tie of the roof or other covering, or if there is no tie, then up to the level of half the vertical height of the rafters or other support of the roof:

(b.) The height of every storey, other than a topmost storey, shall be measured from the level of the upper surface of the floor of the storey up to the level of the upper surface of the floor of the storey next above it.

(ii.) The height of a wall shall be measured from the top of the footings to the highest part of the wall, or in the case of a gable, to half the height of the gable.

(iii.) Walls shall be deemed to be divided into distinct lengths by return walls. The length of a wall shall be measured from the centre of one return wall to the centre of another, provided that the return walls are external walls, party walls, or cross walls, of the thickness prescribed by the By Laws, and are bonded into the walls so deemed to be divided.

A wall shall not, for the purpose of this rule, be deemed a cross wall unless it is carried up to the top of

the topmost storey, and unless in each storey the aggregate extent of the vertical faces or elevations of all the recesses and that of all the openings therein, taken together, shall not exceed *one-half* of the whole extent of the vertical face or elevation of the wall in such storey.

19. Every person who shall erect a new domestic building shall construct every external wall and every party wall of such building in accordance with the following rules, and in every case the thickness prescribed shall be the minimum thickness of which any such wall may be constructed, and the several rules shall apply only to walls built of good bricks, not less than *nine inches* long, or of suitable stone, or other blocks of hard and incombustible substance, the beds or courses being horizontal.

(a.) Where the wall does not exceed *twenty-five feet* in height its thickness shall be as follows:— Height up to 25 feet.

If the wall does not exceed *thirty feet* in length, and does not comprise more than two storeys, it shall be *nine inches* thick for its whole height:

If the wall exceeds *thirty feet* in length, or comprises more than two storeys, it shall be *thirteen and a half inches* thick below the topmost storey, and *nine inches* thick for the rest of its height.

(b.) Where the wall exceeds *twenty-five feet* but does not exceed *thirty feet* in height it shall be *thirteen and a half inches* thick below the topmost storey, and *nine inches* thick for the rest of its height. Height up to 30 feet.

(c.) Where the wall exceeds *thirty feet* but does not exceed *forty feet* in height its thickness shall be as follows:— Height up to 40 feet.

If the wall does not exceed *thirty-five feet* in length it shall be *thirteen and a half inches* thick below the topmost storey, and *nine inches* thick for the rest of its height.

If the wall exceeds *thirty-five feet* in length it shall be *eighteen inches* thick for the height of one storey, then *thirteen and a half inches* thick for the rest of its height below the topmost storey, and *nine inches* thick for the rest of its height.

(d.) Where the wall exceeds *forty feet* but does not Height up to 50 feet.

exceed *fifty feet* in height its thickness shall be as follows:—

If the wall does not exceed *thirty feet* in length it shall be *eighteen inches* thick for the height of one storey, then *thirteen and a half inches* thick for the rest of its height below the topmost storey, and *nine inches* thick for the rest of its height:

If the wall exceeds *thirty feet* but does not exceed *forty-five feet* in length it shall be *eighteen inches* thick for the height of two storeys, then *thirteen and a half inches* thick for the rest of its height:

If the wall exceeds *forty-five feet* in length it shall be *twenty-two inches* thick for the height of one storey, then *eighteen inches* thick for the height of the next storey, and then *thirteen and a half inches* thick for the rest of its height.

Height up to
60 feet.

(e.) Where the wall exceeds *fifty feet* but does not exceed *sixty feet* in height its thickness shall be as follows:—

If the wall does not exceed *forty-five feet* in length it shall be *eighteen inches* thick for the height of two storeys and *thirteen and a half inches* thick for the rest of its height:

If the wall exceeds *forty-five feet* in length it shall be *twenty-two inches* thick for the height of one storey, then *eighteen inches* thick for the height of the next two storeys, and then *thirteen and a half inches* thick for the rest of its height.

Height up to
70 feet.

(f.) Where the wall exceeds *sixty feet* but does not exceed *seventy feet* in height its thickness shall be as follows:—

If the wall does not exceed *forty-five feet* in length it shall be *twenty-two inches* thick for the height of one storey, then *eighteen inches* thick for the height of the next two storeys, and then *thirteen and a half inches* thick for the rest of its height:

If the wall exceeds *forty-five feet* in length it shall be increased in thickness in each of the storeys below the uppermost two storeys by *four and a half inches* (subject to the provision hereinafter contained respecting distribution in piers).

Height up to
80 feet.

(g.) Where the wall exceeds *seventy feet* but does not

exceed *eighty feet* in height its thickness shall be as follows:—

If the wall does not exceed *forty-five feet* in length it shall be *twenty-two inches* thick for the height of one storey, then *eighteen inches* thick for the height of the next three storeys, and *thirteen and a half inches* thick for the rest of its height:

If the wall exceeds *forty-five feet* in length it shall be increased in thickness in each of the storeys below the uppermost two storeys by *four and a half inches* (subject to the provision hereinafter contained respecting distribution in piers).

(h.) Where the wall exceeds *eighty feet* but does not exceed *ninety feet* in height its thickness shall be as follows:— Height up to 90 feet.

If the wall does not exceed *forty-five feet* in length it shall be *twenty-six inches* thick for the height of one storey, then *twenty-two inches* thick for the height of the next storey, then *eighteen inches* thick for the height for the next three storeys, and then *thirteen and a half inches* thick for the rest of its height:

If the wall exceeds *forty-five feet* in length it shall be increased in thickness in each of the storeys below the uppermost two storeys by *four and a half inches* (subject to the provision hereinafter contained respecting distribution in piers).

(i.) Where the wall exceeds *ninety feet* but does not exceed *one hundred feet* in height its thickness shall be as follows:— Height up to 100 feet.

If the wall does not exceed *forty-five feet* in length it shall be *twenty-six inches* thick for the height of one storey, then *twenty-two inches* thick for the height of the next two storeys, then *eighteen inches* thick for the height of the next three storeys, and then *thirteen and a half inches* thick for the rest of its height:

If the wall exceeds *forty-five feet* in length, it shall be increased in thickness in each of the storeys below the uppermost two storeys, by *four and a half inches* (subject to the provision hereinafter contained respecting distribution in piers).

(j.) If any storey exceeds in height *sixteen times* the thickness prescribed for its walls, the thickness of each

external wall and of each party wall throughout that storey shall be increased to *one-sixteenth* part of the height of the storey, and the thickness of each external wall and of each party wall below that storey shall be proportionately increased (subject to the provision hereinafter contained respecting distribution in piers).

(k.) Every external wall and every party wall of any storey which exceeds *ten feet* in height shall be not less than *thirteen and a half inches* in thickness.

Piers.

(l.) Where by any of the foregoing rules relating to the thickness of external walls and party walls of domestic buildings an increase of thickness is required in the case of a wall exceeding *sixty feet* in height and *forty-five feet* in length, or in the case of a storey exceeding in height *sixteen* times the thickness prescribed for its walls, or in the case of a wall below that storey, the increased thickness may be confined to piers properly distributed, of which the collective widths amount to *one-fourth* part of the length of the wall. The width of the piers may nevertheless be reduced if the projection is proportionately increased, the horizontal sectional area not being diminished; but the projection of any such pier shall in no case exceed *one-third* of its width.

20. Every person who shall erect a new public building, or a new building of the warehouse class, shall construct every external wall and every party wall of such building in accordance with the following rules; and in every case the thickness prescribed shall be the minimum thickness of which any such wall may be constructed, and the several rules shall apply only to walls built of good bricks, not less than *nine inches* long, or of suitable stone or other blocks of hard and incombustible substance, the beds or courses being horizontal.

Height up to
25 feet.

(a.) Where the wall does not exceed *twenty-five feet* in height (whatever is its length), it shall be *thirteen and a half inches* thick at its base.

Height up to
30 feet.

(b.) Where the wall exceeds *twenty-five feet* but does not exceed *thirty feet* in height, it shall be at its base of the thickness following:—

If the wall does not exceed *forty-five feet* in length, it shall be *thirteen and a half inches* thick at its base:

If the wall exceeds *forty-five feet* in length, it shall be *eighteen inches* thick at its base.

(c.) Where the wall exceeds *thirty feet* but does not exceed *forty feet* in height, it shall be at its base of the thickness following :— Height up to 40 feet.

If the wall does not exceed *thirty-five feet* in length, it shall be *thirteen and a half inches* thick at its base :

If the wall exceeds *thirty-five feet* but does not exceed *forty-five feet* in length, it shall be *eighteen inches* thick at its base :

If the wall exceeds *forty-five feet* in length, it shall be *twenty-two inches* thick at its base.

(d.) Where the wall exceeds *forty feet* but does not exceed *fifty feet* in height, it shall be at its base of the thickness following ;— Height up to 50 feet.

If the wall does not exceed *thirty feet* in length, it shall be *eighteen inches* thick at its base :

If the wall exceeds *thirty feet* but does not exceed *forty-five feet* in length, it shall be *twenty-two inches* thick at its base :

If the wall exceeds *forty-five feet* in length, it shall be *twenty-six inches* thick at its base:

(e.) Where the wall exceeds *fifty feet* but does not exceed *sixty feet* in height, it shall be at its base of the thickness following :— Height up to 60 feet.

If the wall does not exceed *forty-five feet* in length, it shall be *twenty-two inches* thick at its base :

If the wall exceeds *forty-five feet* in length, it shall be *twenty-six inches* thick at its base.

(f.) Where the wall exceeds *sixty feet* but does not exceed *seventy feet* in height, it shall be at its base of the thickness following :— Height up to 70 feet.

If the wall does not exceed *forty-five feet* in length, it shall be *twenty-two inches* thick at its base :

If the wall exceeds *forty-five feet* in length, it shall be increased in thickness from the base up to within *sixteen feet* from the top of the wall by *four and a half inches* (subject to the provision hereinafter contained respecting distribution in piers).

(g.) Where the wall exceeds *seventy feet* but does not exceed *eighty feet* in height, it shall be at its base of the thickness following :— Height up to 80 feet.

If the wall does not exceed *forty-five feet* in length, it shall be *twenty-two inches* thick at its base :

If the wall exceeds *forty-five feet* in length, it shall be increased in thickness from the base up to within *sixteen feet* from the top of the wall by *four and a half inches* (subject to the provision hereinafter contained respecting distribution in piers).

Height up to
90 feet.

(h.) Where the wall exceeds *eighty feet* but does not exceed *ninety feet* in height, it shall be at its base of the thickness following :—

If the wall does not exceed *forty-five feet* in length, it shall be *twenty-six inches* thick at its base :

If the wall exceeds *forty-five feet* in length, it shall be increased in thickness from the base up to within *sixteen feet* from the top of the wall by *four and a half inches* (subject to the provision hereinafter contained respecting distribution in piers).

Height up to
100 feet.

(i.) Where the wall exceeds *ninety feet* but does not exceed *one hundred feet* in height, it shall be at its base of the thickness following,—

If the wall does not exceed *forty-five feet* in length, it shall be *twenty-six inches* thick at its base :

If the wall exceeds *forty-five feet* in length, it shall be increased in thickness from the base up to within *sixteen feet* from the top of the wall by *four and a half inches* (subject to the provision hereinafter contained respecting distribution in piers).

(j.) The thickness of the wall at the top, and for *sixteen feet* below the top, shall be *thirteen and a half inches*, and the intermediate parts of the wall between the base and *sixteen feet* below the top shall be built solid throughout the space between straight lines drawn on each side of the wall and joining the thickness at the base to the thickness at *sixteen feet* below the top. Nevertheless, in walls not exceeding *thirty feet* in height the walls of the topmost storey may be *nine inches* thick, provided the height of that storey does not exceed *ten feet*.

(k.) If any storey exceeds in height *fourteen times* the thickness prescribed for its walls, the thickness of each external wall and of each party wall throughout that storey shall be increased to *one-fourteenth* part of the

height of the storey, and the thickness of each external wall and of each party wall below that storey shall be proportionately increased (subject to the provision hereinafter contained respecting distribution in piers).

(l.) Every external wall and every party wall of any storey which exceeds *ten feet* in height shall be not less than *thirteen and a half inches* in thickness.

(m.) Where by any of the foregoing rules relating ^{Piers.} to the thickness of external walls and party walls of public buildings or buildings of the warehouse class an increase of thickness is required in the case of a wall exceeding *sixty feet* in height and *forty-five feet* in length, or in the case of a storey exceeding in height *fourteen* times the thickness prescribed for its walls, or in the case of a wall below that storey, the increased thickness may be confined to piers properly distributed, of which the collective widths amount to *one-fourth* part of the length of the wall. The width of the piers may nevertheless be reduced if the projection is proportionately increased, the horizontal sectional area not being diminished; but the projection of any such pier shall in no case exceed *one-third* of its width.

21. Every person who shall erect a new building shall construct, in accordance with the following rules, every *cross wall* which, in pursuance of the By Law in that behalf, may, as a return wall, be deemed a means of determining the length of any external wall or party wall of such building; and in every case the thickness prescribed shall be the minimum thickness of which any such wall may be constructed;

And the several rules shall apply only to walls built of good bricks, not less than *nine inches* long, or of suitable stone or other blocks of hard and incombustible substance, the beds or courses being horizontal:—

The thickness of every such cross wall shall be at least *two-thirds* of the thickness prescribed by the By Law in that behalf for an external wall or party wall of the same height and length, and belonging to the same class of building as that to which such cross wall belongs, but shall in no case be less than *nine inches*:—

But if such cross wall supports a superincumbent external wall, the whole of such cross wall shall be of

the thickness prescribed by the By Law in that behalf for an external wall or a party wall of the same height and length, and belonging to the same class of building as that to which such cross wall belongs.

22. Every person who shall erect a new building and shall construct any external wall, party wall, or cross wall of such building of any material other than good bricks, not less than *nine inches* long, or suitable stone or other blocks of hard and incombustible substance, the beds or courses being horizontal, shall comply with the following rules with respect to the thickness of such walls:—

(a.) Where a wall is built of stone or of clunches of bricks, or other burnt or vitrified material, the beds or courses not being horizontal, its thickness shall be *one-third* greater than that prescribed by the By Law in that behalf for a wall built of bricks, but in other respects of the same description, height, and length, and belonging to the same class of building;

(b.) A wall built of other suitable material shall be deemed to be of sufficient thickness if constructed of the thickness prescribed by the By Law in that behalf for a wall built of bricks, but in other respects of the same description, height, and length, and belonging to the same class of building.

23. Every person who shall erect a new building and shall leave in any storey or storeys of such building an extent of opening in any external wall which shall be greater than *one-half* of the whole extent of the vertical face or elevation of the wall or walls of the storey or storeys in which the opening is left, shall construct—

(a.) Sufficient piers of brickwork or other sufficient supports of incombustible material so disposed as to carry the superstructure; and

(b.) A sufficient pier or piers or other sufficient supports of that description at the corner or angle of any street on which the building abuts; or

(c.) Such a pier or other support in each wall within *three feet* of the corner or angle of the street.

24. Every person who shall erect a new building of the warehouse class shall cause every loophole frame of wood, that is to say, every framework of wood sur-

rounding any door or window opening in any storey of such building for the reception or delivery of goods, to be fixed at a distance of not less than *one inch and a half* from the face of any external wall.

Subject to the foregoing provision, every person who shall erect a new building shall cause all woodwork in any external wall of such building (except any bressummer, or any storey post under a bressummer, and any frame of a door or window of a shop) to be set back in reveals *four inches* at least from the outer face of such wall.

25. Every person who shall erect a new building shall cause such part of any external wall of such building as is within a distance of *fifteen feet* from any other building to be carried up so as to form a parapet *one foot* at least above the highest part of any roof or gutter which adjoins such part of such external wall, and he shall cause the thickness of the parapet so carried up to be at least *nine inches* throughout.

26. He shall cause every party wall of such building to be carried up *nine inches*, at the least, in thickness :

(i.) Above the roof, flat, or gutter of the highest building adjoining thereto to such height as will give, in the case of a building of the warehouse class or of a public building, a distance of at least *three feet*, and in the case of any other building a distance of at least *fifteen inches*, measured at right angles to the slope of the roof, or above the highest part of any flat or gutter, as the case may be :

(ii.) Above any turret, dormer, lantern-light, or other erection of combustible materials fixed on the roof or flat of any building within *four feet* from the party wall, and so as to extend at least *twelve inches* higher and wider on each side than such erection :

(iii.) To a height of *twelve inches* at the least above such part of any roof as is opposite to and within *four feet* from the party wall.

In every case where the eaves of the roof project beyond the face of the building, he shall cause every party wall of such building to be properly corbelled out, in brickwork or stonework, to the full extent of such projection, and to be carried up above the pro-

jecting eaves, *nine inches* at the least in thickness to such height as will give, in the case of a building of the warehouse class or of a public building, a distance of at least *three feet*, and in the case of any other building a distance of at least *fifteen inches* measured at right angles to the slope of the roof.

27. He shall cause every wall of such building, when carried up above any roof, flat, or gutter, so as to form a parapet, to be properly coped or otherwise protected, in order to prevent water from running down the sides of such parapet, or soaking into any wall.

28. He shall not construct any party wall of such building so that any opening shall be made or left in such wall.

29. He shall not make any recess in any external wall or party wall of such building :—

(a.) Unless the back of such recess be at the least *nine inches* thick ;

(b.) Unless a sufficient arch be turned in every storey over every such recess ;

(c.) Unless in each storey the aggregate extent of recesses having backs of less thickness than the thickness prescribed by any By Law in that behalf for the wall in which such recesses are made do not exceed *one-half* of the extent of the vertical superficies of such wall ;

(d.) Unless the side of any such recess nearest to the inner face of any return external wall is distant at the least *thirteen and a half inches* therefrom.

30. He shall not make in any wall of such building any chase which shall be wider than *fourteen inches* or more than *four and a half inches* deep from the face of such wall, or shall leave less than *nine inches* in thickness at the back or opposite side thereof, or which shall be within *thirteen and a half inches* from any other chase, or within *seven feet* from any other chase on the same side of such wall, or within *thirteen and a half inches* from any return wall.

31. He shall not place in any party wall of such building any bond timber, or any plate, block, brick, or plug of wood.

32. He shall not place the end of any bressummer, beam, or joist in any party wall of such building, unless

the end of such bressummer, beam, or joist be at least *four and a half inches* distant from the centre line of such party wall.

33. He shall cause every girder to be borne by a sufficient template of stone, iron, terra-cotta, or vitrified stoneware of the full breadth of the girder.

34. He shall cause every bressummer to have a bearing in the direction of its length of *four inches* at least at each end, on a sufficient pier of brick or stone or on a storey post of timber or iron fixed on a solid foundation, in addition to its bearing on any party wall; and

He shall also, if necessary, cause such bressummer to have such other storey posts, iron columns, stanchions, or piers of brick or stone on a solid foundation under the same as may be sufficient to carry the superstructure.

35. He shall cause the open space inside any partition wall of such building, or between the joists in any wall of such building, to be stopped with brickwork, concrete, pugging, or other incombustible material, at every floor and ceiling.

36. He shall, except in such case as is hereinafter *Chimneys* provided, cause every chimney of such building to be built on solid foundations and with footings similar to the footings of the wall against which such chimney is built, and to be properly bonded into such wall:

Provided, nevertheless, that such person may cause any chimney of such building to be built on sufficient corbels of brick, stone, or other hard and incombustible materials, if the work so corbelled out does not project from the wall more than the thickness of the wall measured immediately below the corbel.

37. He shall cause the inside of every flue of such building to be properly rendered or pargeted as such flue is carried up, unless the whole flue shall be lined with fireproof piping of stoneware at least *one inch* thick, and unless the spandrel angles shall be filled in solid with brickwork or other incombustible material.

Such person shall also cause the back or outside of such flue, which shall not be constructed so as to form part of the outer face of an external wall, to be properly rendered in every case where the brickwork of which

such back or outside may be constructed is less than *nine inches* thick.

38. He shall cause every flue in such building which may be intended for use in connection with any furnace, cockle, steam boiler, or close-fire, constructed for any purpose of trade, business, or manufacture, or which may be intended for use in connection with any cooking range or cooking apparatus of such building when occupied as a hotel, tavern, or eating house, to be surrounded with brickwork at least *nine inches* thick for a distance of *ten feet* at the least in height from the floor on which such furnace, cockle, steam boiler, close-fire, cooking range, or cooking apparatus may be constructed or placed.

39. He shall cause a sufficient arch of brick or stone or a sufficient bar of wrought iron to be built over the opening of every chimney of such building to support the breast of such chimney; and if the breast projects more than *four and a half inches* from the face of the wall, and the jamb on either side is of less width than *thirteen and a half inches*, he shall cause the abutments to be tied in by a bar or bars of wrought iron of sufficient strength, *eighteen inches* longer than the opening, turned up and down at the ends, and built into the jambs on each side.

40. He shall cause the jambs of every chimney of such building to be at least *nine inches* wide on each side of the opening of such chimney.

41. He shall cause the breast of every chimney of such building and the brickwork or stonework surrounding every smoke flue and every copper flue of such building to be at least *four and a half inches* in thickness.

42. He shall cause the back of any chimney opening in a party wall of any room which may be constructed for occupation as a kitchen to be at least *nine inches* thick to the height of at least *six feet* above such chimney opening, and he shall cause such thickness to be continued at the back of the flue.

Such person shall cause the back of every other chimney opening in such building from the hearth up to the height of *twelve inches* above such opening, to be

at least *four and a half inches* thick if such opening be in an external wall, and *nine inches* thick if such opening be elsewhere than in an external wall.

43. He shall cause the upper side of every flue of such building, when the course of such flue makes with the horizon an angle of less than *forty-five* degrees, to be at least *nine inches* in thickness.

44. He shall construct every arch, upon which any flue may be carried, so that such arch shall be effectually supported by means of a bar or bars of wrought iron of adequate strength.

He shall cause every such bar, to the extent of *four and a half inches*, to be securely built or pinned into the wall at each end thereof.

He shall provide for every *nine inches* of the width of the soffit of such arch, one, at the least, of such bars as a means of support for such arch.

45. He shall cause every chimney shaft or smoke flue of such building to be carried up in brickwork or stonework all round at least *four and a half inches* thick to a height of not less than *three feet* above the roof, flat, or gutter adjoining thereto, measured at the highest point in the line of junction with such roof, flat, or gutter.

46. He shall not cause the brickwork or stonework of any chimney shaft of such building, other than a chimney shaft of the furnace of any steam engine, brewery, distillery, or manufactory, to be built higher above the roof, flat, or gutter adjoining such chimney shaft, measured from the highest point in the line of junction with such roof, flat, or gutter, than a height equal to *six* times the least width of such chimney shaft at the level of such highest point, unless such chimney shaft shall be built with and bonded to another chimney shaft not in the same line with such first-mentioned chimney shaft, or shall be otherwise made secure.

47. He shall not place any iron holdfast or other metal fastening nearer than *two inches* to the inside of any flue or chimney opening in such building.

48. He shall not place any timber or woodwork :—

(a) In any wall or chimney breast of such building nearer than *nine inches* to the inside of any flue or chimney opening :

(b) Under any chimney opening of such building within *fifteen inches* from the upper surface of the hearth thereof;

A person who shall erect a new building shall not drive any wooden plug into any wall or chimney breast of such building nearer than *six inches* to the inside of any flue or chimney opening.

49. He shall cause the face of the brickwork or stonework about any flue or chimney opening of such building, where such face is at a distance of less than *two inches* from any timber or woodwork, and where the substance of such brickwork or stonework is less than *nine inches* thick, to be properly rendered.

50. He shall not construct any chimney or flue of such building so as to make or leave in such chimney or flue any opening for the insertion of any ventilating valve, or for any other purpose, unless such opening be at least *nine inches* distant from any timber or other combustible substance.

51. He shall not fix in such building any pipe for the purpose of conveying smoke or other products of combustion, unless such pipe be so fixed at the distance of *nine inches* at the least from any combustible substance.

Roofs.

52. He shall cause the flat and roof of such building, and every turret, dormer, lantern-light, skylight, or other erection placed on the flat or roof of such building to be externally covered with slates, tiles, metal, or other incombustible materials, except as regards any door, door frame, window or window frame of any such turret, dormer, lantern-light, skylight, or other erection.

He shall also cause every gutter, shoot, or trough in connection with the roof of such building to be constructed of incombustible materials.

With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings.

53. Every person who shall erect a new domestic building shall provide in front of such building an open

space, which shall be free from any erection thereon above the level of the ground, except any portico, porch, step, or other like projection from such building, or any gate, fence, or wall, not exceeding *seven feet* in height, and which, measured to the boundary of any lands or premises immediately opposite, or to the opposite side of any street which such building may front, shall, throughout the whole line of frontage of such building, extend to a distance of *twenty-four feet* at the least; such distance being measured in every case at right angles to the external face of any wall of such building which shall front or abut on such open space.

A person who shall make any alteration in or addition to such building shall not, by such alteration or addition, diminish the extent of open space provided in pursuance of this By Law in connection with such building.

54. He shall provide in the rear of such building an open space exclusively belonging to such building, and of an aggregate extent of not less than *one hundred and fifty square feet*, and free from any erection thereon above the level of the ground, except a watercloset, earthcloset, or privy, and an ashpit.

He shall cause such open space to extend, laterally, throughout the entire width of such building, and he shall cause the distance across such open space from every part of such building to the boundary of any lands or premises immediately opposite or adjoining the site of such building to be not less in any case than *ten feet*.

If the height of such building be *fifteen feet*, he shall cause such distance to be *fifteen feet* at the least.

If the height of such building be *twenty-five feet*, he shall cause such distance to be *twenty feet* at the least. If the height of such building be *thirty-five feet* or exceed *thirty-five feet*, he shall cause such distance to be *twenty-five feet* at the least.

A person who shall make any alteration in or addition to such building shall not, by such alteration or addition, diminish the aggregate extent of open space provided in pursuance of this By Law in connection with such building, or in any other respect fail to comply with any provision of this By Law.

For the purposes of this By Law the height of such building shall be measured upwards from the level of the ground over which such open space shall extend to the level of half the vertical height of the roof or to the top of the parapet, whichever may be the higher.

55. He shall construct in the wall of each storey of such building which shall immediately front or abut on such open spaces as, in pursuance of the By Laws in that behalf, shall be provided in connection with such building, a sufficient number of suitable windows in such a manner and in such a position that each of such windows shall afford effectual means of ventilation by direct communication with the external air.

56. He shall so construct every room which shall be situated in the lowest storey of such building, and shall be provided with a boarded floor, that there shall be, for the purpose of ventilation, between the under side of every joist on which such floor may be laid, and the upper surface of the asphalt or concrete with which, in pursuance of the By Law in that behalf, the ground surface or site of such building may be covered, a clear space of *three inches* at the least in every part, and he shall cause such space to be thoroughly ventilated by means of suitable and sufficient air-bricks, or by some other effectual method.

57. Every person who shall erect a new building shall construct in every habitable room of such building one window, at the least, opening directly into the external air, and he shall cause the total area of such window, or, if there be more than one, of the several windows, clear of the sash frames, to be equal at the least to *one-tenth* of the floor area of such room.

Such person shall also construct every such window so that *one-half*, at the least, may be opened, and so that the opening may extend in every case to the top of the window.

58. Every person who shall erect a new domestic building shall cause every habitable room of such building which is without a fireplace, and a flue properly constructed and properly connected with such fireplace, to be provided with special and adequate means of ventilation by a sufficient aperture or air shaft which shall

provide an unobstructed sectional area of *one hundred square inches* at the least.

59. Every person who shall erect a new public building shall cause such building to be provided with adequate means of ventilation.

With respect to the drainage of buildings.

60. Every person who shall erect a new building shall cause the subsoil of the site of such building to be effectually drained by means of suitable earthenware field pipes, properly laid to a suitable outfall, whenever the dampness of the site renders such a precaution necessary. Drainage.

He shall not lay any such pipe in such a manner or in such a position as to communicate directly with any sewer or cesspool, or with any drain constructed or adapted to be used for conveying sewage, but shall provide a suitable trap, with a ventilating opening, at a point in the line of the subsoil drain as near as may be practicable to such trap.

61. He shall construct the lowest storey of such building at such level as will allow of the construction of a drain sufficient for the effectual drainage of such building, and of the provision of the requisite communication with any sewer into which such drain may lawfully empty, at a point in the upper half diameter of such sewer, or with any other means of drainage with which such drain may lawfully communicate.

62. He shall, in the construction of every drain of such building, other than a drain constructed in pursuance of the By Law in that behalf for the drainage of the subsoil of the site of such building, use good sound pipes formed of glazed stoneware, or of other equally suitable material.

He shall cause every such drain to be of adequate size, and, if constructed or adapted to be used for conveying sewage, to have an internal diameter not less than *four inches*, and to be laid in a bed of good concrete, with a proper fall, and with water-tight, socketed, or other suitable joints.

He shall not construct any such drain so as to pass

under any building, except in any case where any other mode of construction may be impracticable, and in that case he shall cause such drain to be so laid in the ground that there shall be a distance equal, at the least, to the full diameter thereof between the top of such drain at its highest point and the surface of the ground under such building.

He shall also cause such drain to be laid in a direct line for the whole distance beneath such building, and to be completely imbedded in and covered with good and solid concrete, at least *six inches* thick, all round.

He shall likewise cause adequate means of ventilation to be provided in connection with such drain at each end of such portion thereof as is beneath such building.

He shall cause every inlet to any drain, not being an inlet provided in pursuance of the By Law in that behalf, as an opening for the ventilation of such drain, to be properly trapped.

63. He shall provide, within the curtilage thereof, in every main drain or other drain of such building, which may directly communicate with any sewer or other means of drainage into which such drain may lawfully empty, a suitable trap at a point as distant as may be practicable from such building, and as near as may be practicable to the point at which such drain may be connected with such sewer or other means of drainage.

64. He shall not construct the several drains of such building in such a manner as to form in such drains any right-angled junction, either vertical or horizontal. He shall cause every branch drain or tributary drain to join another drain obliquely in the direction of the flow of such drain.

65. He shall, for the purpose of securing efficient ventilation of the drains of such building, comply with the following requirements:—

(i.) He shall provide at least two untrapped openings to the drains, and in the provision of such openings, he shall adopt such of the two arrangements hereinafter specified as the circumstances of the case may render the more suitable and effectual.

(a.) One opening, being at or near the level of the surface of the ground adjoining such opening, shall communicate with the drains by means of a suitable pipe, shaft, or disconnecting chamber, and shall be situated as near as may be practicable to the trap which, in pursuance of the By Law in that behalf, shall be provided between the main drain or other drain of the building, and the sewer or other means of drainage with which such drain may lawfully communicate. Such opening shall also in every case be situated on that side of the trap which is the nearer to the building.

The second opening shall be obtained by carrying up from a point in the drains, as far distant as may be practicable from the point at which the first-mentioned opening shall be situated, a pipe or shaft, vertically, to such a height and in such a manner as effectually to prevent any escape of foul air from such pipe or shaft into any building in the vicinity thereof, and in no case to a less height than *ten feet*.

(b.) In every case where the foregoing arrangement of the openings to the drains may be impracticable, there shall be substituted the arrangement hereinafter prescribed.

One opening shall be obtained by carrying up from a point, as near as may be practicable to the trap, which, in pursuance of the By Law, in that behalf, shall be provided between the main drain or other drain of the building and the sewer or other means of drainage with which such drain may lawfully communicate, a pipe or shaft, vertically, to such a height and in such a manner as effectually to prevent any escape of foul air from such pipe or shaft into any building in the vicinity thereof, and in no case to a less height than *ten feet*. Such opening shall also in every case be situated on that side of the trap which is the nearer to the building.

The second opening, being at a point in the drains as far distant as may be practicable from the point at which such last-mentioned pipe or shaft shall be carried up, shall be at or near the level of the surface of the ground adjoining such opening, and shall communicate with the drains by means of a suitable pipe or shaft.

(ii.) He shall cause every opening provided in accordance with either of the arrangements hereinbefore specified to be furnished with a suitable grating or other suitable cover, for the purpose of preventing any obstruction in or injury to any pipe or drain by the introduction of any substance through any such opening. He shall, in every case, cause such grating or cover to be so constructed and fitted as to secure the free passage of air through such grating or cover by means of a sufficient number of apertures, of which the aggregate extent shall be not less than the sectional area of the pipe or drain to which such grating or cover may be fitted.

(iii.) Every pipe or shaft which may be used in connection with either of the arrangements hereinbefore specified, shall be of a sectional area not less than that of the drain with which such pipe or shaft shall communicate, and not less in any case than the sectional area of a pipe or shaft of the diameter of *four inches*.

(iv.) No bend or angle shall (except where unavoidable) be formed in any pipe or shaft used in connection with either of the arrangements hereinbefore specified.

(v.) Provided always, that for the purpose of either of the arrangements hereinbefore specified the soil pipe of any watercloset, in every case where the situation, sectional area, height, and mode of construction of such soil pipe shall be in accordance with the requirements applicable to the pipe or shaft to be carried up from the drains, may be deemed to provide the necessary opening for ventilation which would otherwise be obtained by means of such last-mentioned pipe or shaft.

66. He shall not construct any drain of such building in such a manner as to allow any inlet to such drain (except such inlet as may be necessary from the apparatus of any watercloset) to be made within such building.

He shall cause the soil pipe from every watercloset in such building to be at least *four inches* in diameter, and to be fixed outside such building, and to be continued upwards without diminution of its diameter, and (except where unavoidable) without any bend or angle being formed in such soil pipe to such a height and in

such a position as to afford, by means of the open end of such soil pipe, a safe outlet for sewer air.

He shall so construct such soil pipe that there shall not be any trap between such soil pipe and the drains, or any trap (other than such as may necessarily form part of the apparatus of any watercloset) in any part of such soil pipe.

He shall also cause the waste pipe from every bath, sink (not being a slop sink constructed or adapted to be used for receiving any solid or liquid filth), or lavatory, the overflow pipe from any cistern and from every safe under any bath or watercloset, and every pipe in such building for carrying off waste water to be taken through an external wall of such building, and to discharge in the open air over a channel leading to a trapped gully grating at least *eighteen inches* distant.

He shall, as regards the mode of construction of the waste pipe from any slop sink constructed or adapted to be used for receiving within such building any solid or liquid filth, comply in all respects with such of the provisions of this By Law as are applicable to the soil pipe from a watercloset.

With respect to waterclosets, earthclosets, privies, ashpits, and cesspools in connection with buildings.

67. Every person who shall construct a watercloset Waterclosets. or earthcloset in a building shall construct such watercloset or earthcloset in such a position that one of its sides at the least shall be an external wall.

68. Every person who shall construct a watercloset or earthcloset in connection with a building, whether the situation of such watercloset or earthcloset be or be not within such building, shall construct in one of the walls of such watercloset or earthcloset a window of not less dimensions than *two feet by one foot*, exclusive of the frame, and opening directly into the external air.

He shall, in addition to such window, cause such watercloset or earthcloset to be provided with adequate means of constant ventilation by at least one air-brick built in an external wall of such watercloset or earthcloset, or by an air shaft, or by some other effectual method or appliance.

69. Every person who shall construct a watercloset in connection with a building shall furnish such watercloset with a separate cistern, service box, or flushing box of adequate capacity, which shall be so constructed, fitted, and placed as to admit of the supply of water for use in such watercloset without any direct connection between any service pipe upon the premises and any part of the apparatus of such watercloset, other than such cistern, service box, or flushing box.

He shall furnish such watercloset with a suitable apparatus for the effectual application of water to any pan, basin, or other receptacle with which such apparatus may be connected and used, and for the effectual flushing and cleansing of such pan, basin, or other receptacle, and for the prompt and effectual removal therefrom of any solid or liquid filth which may from time to time be deposited therein.

He shall furnish such watercloset with a pan, basin, or other suitable receptacle of non-absorbent material, and of such shape, of such capacity, and of such mode of construction as to receive and contain a sufficient quantity of water, and to allow all filth which may from time to time be deposited in such pan, basin, or receptacle to fall free of the sides thereof, and directly into the water received and contained in such pan, basin, or receptacle.

He shall not construct or fix under such pan, basin, or receptacle any "container" or other similar fitting.

He shall not construct or fix in or in connection with the watercloset apparatus any trap of the kind known as a "D trap."

Earthclosets.

70. Every person who shall construct an earthcloset in connection with a building shall furnish such earthcloset with a reservoir or receptacle, of suitable construction and of adequate capacity, for dry earth or other deodorizing substance, and he shall construct and fix such reservoir or receptacle in such a manner and in such a position as to admit of ready access to such reservoir or receptacle for the purpose of depositing therein the necessary supply of dry earth or other deodorizing substance.

He shall construct or fix in connection with such reservoir or receptacle suitable means or apparatus for the frequent and effectual application of a sufficient quantity of dry earth or other deodorizing substance to any filth which may from time to time be deposited in any pan, pit, or other receptacle for filth constructed, fitted, or used in or in connection with such earthcloset.

71. Every person who shall construct an earthcloset in connection with a building, and shall provide in or in connection with such earthcloset a fixed receptacle for filth, shall construct or fix such receptacle in such a manner and in such a position as to admit of the frequent and effectual application of a sufficient quantity of dry earth or other deodorizing substance to any filth which may from time to time be deposited in such receptacle, and in such a manner and in such a position as to admit of ready access to such receptacle for the purpose of removing the contents thereof.

He shall not construct such receptacle of a capacity greater than may be sufficient to contain such filth and dry earth or other deodorizing substance as may be deposited therein during a period not exceeding

, or in any case of a capacity exceeding
cubic feet.

He shall construct such receptacle of such material or materials, and in such a manner, as to prevent any absorption by any part of such receptacle of any filth deposited therein, or any escape, by leakage or otherwise, of any part of the contents of such receptacle.

He shall construct or fix such receptacle so that the bottom or floor thereof shall be at least

inches above the level of the surface of the ground immediately adjoining the earthcloset, and so that the contents of such receptacle may not at any time be exposed to any rainfall or to the drainage of any waste water or liquid refuse from any adjoining premises.

72. Every person who shall construct an earthcloset in connection with a building, and shall provide in or in connection with such earthcloset a movable receptacle for filth, shall construct such earthcloset so that the position and mode of fitting of such receptacle may admit of the frequent and effectual application of a

sufficient quantity of dry earth or other deodorizing substance to any filth which may from time to time be deposited in such receptacle, and may also admit of ready access to that part of the earthcloset in which such receptacle may be placed or fitted, and of the convenient removal of such receptacle or of the contents thereof.

He shall also construct such earthcloset so that the contents of such receptacle may not at any time be exposed to any rainfall or to the drainage of any waste water or liquid refuse from any adjoining premises.

Privy.

73. Every person who shall construct a privy in connection with a building shall construct such privy at a distance of *six feet* at the least from a dwelling-house or public building, or any building in which any person may be, or may be intended to be, employed in any manufacture, trade, or business.

74. He shall not construct such privy within the distance of *feet* from any water supplied for use, or used or likely to be used by man for drinking or domestic purposes, or for manufacturing drinks for the use of man, or otherwise in such a position as to endanger the pollution of any such water.

75. He shall construct such privy in such a manner and in such a position as to afford ready means of access to such privy, for the purpose of cleansing such privy and of removing filth therefrom, and in such a manner and in such a position as to admit of all filth being removed from such privy, and from the premises to which such privy may belong, without being carried through any dwelling-house or public building, or any building in which any person may be, or may be intended to be, employed in any manufacture, trade, or business.

76. He shall provide such privy with a sufficient opening for ventilation, as near to the top as practicable, and communicating directly with the external air.

He shall cause the floor of such privy to be flagged or paved with hard tiles or other non-absorbent material, and he shall construct such floor so that it shall be in every part thereof at a height of not less than

six inches above the level of the surface of the ground adjoining such privy, and so that such floor shall have a fall or inclination towards the door of such privy of *half an inch* to the foot.

77. Every person who shall constrict a privy in connection with a building, and shall construct such privy for use in combination with a movable receptacle for filth, shall construct over the whole area of the space immediately beneath the seat of such privy a flagged or asphalted floor, at a height of not less than *three inches* above the level of the surface of the ground adjoining such privy; and he shall cause the whole extent of each side of such space between the floor and the seat to be constructed of flagging, slate, or good brick-work, at least *nine inches* thick, and rendered in good cement or asphalted.

He shall construct the seat of such privy, the aperture in such seat, and the space beneath such seat, of such dimensions as to admit of a movable receptacle for filth of a capacity not exceeding *two cubic feet* being placed and fitted beneath such seat in such a manner and in such a position as may effectually prevent the deposit, upon the floor or sides of the space beneath such seat or elsewhere than in such receptacle, of any filth which may from time to time fall or be cast through the aperture in such seat.

He shall construct the seat of such privy so that the whole of such seat, or a sufficient part thereof, may be readily removed or adjusted in such a manner as to afford adequate access to the space beneath such seat for the purpose of cleansing such space, or of removing therefrom or placing and fitting therein the appropriate receptacle for filth.

78. Every person who shall construct a privy in connection with a building, and shall construct such privy for use in combination with a fixed receptacle for filth, shall construct or fix in or in connection with such privy suitable means or apparatus for the frequent and effectual application of ashes, dust, or dry refuse to any filth which may from time to time be deposited in such receptacle.

He shall construct such receptacle so that the contents thereof may not at any time be exposed to any

rainfall or the drainage of any waste water or liquid refuse from any adjoining premises.

He shall construct such receptacle of such material or materials and in such a manner as to prevent any absorption by any part of such receptacle of any filth deposited therein, or any escape, by leakage or otherwise, of any part of the contents of such receptacle.

He shall construct such privy so that the bottom or floor thereof shall be in every part at least *three inches* above the level of the surface of the ground adjoining such privy.

He shall not in any case construct such receptacle of a capacity exceeding *eight cubic feet*.

He shall construct the seat of such privy so that the whole of such seat, or a sufficient part thereof, may be readily removed or adjusted in such a manner as to afford adequate access to such receptacle for the purpose of removing the contents thereof, and of cleansing such receptacle, or shall otherwise provide in or in connection with such privy adequate means of access to such receptacle for the purpose aforesaid.

79. A person who shall construct a privy in connection with a building shall not cause or suffer any part of the space under the seat of such privy, or any part of any receptacle for filth in or in connection with such privy to communicate with any drain.

Ashpit.

80. Every person who shall construct an ashpit in connection with a building shall construct such ashpit at a distance of *six feet* at the least from a dwelling-house or public building, or any building in which any person may be, or may be intended to be, employed in any manufacture, trade, or business.

81. He shall not construct such ashpit within the distance of *feet* from any water supplied for use, or used or likely to be used by man for drinking or domestic purposes, or for manufacturing drinks for the use of man, or otherwise in such a position as to endanger the pollution of any such water.

82. He shall construct such ashpit in such a manner and in such a position as to afford ready means of access

to such ashpit for the purpose of cleansing such ashpit, and of removing the contents thereof, and, so far as may be practicable, in such a manner and in such a position as to admit of the contents of such ashpit being removed therefrom, and from the premises to which such ashpit may belong, without being carried through any dwelling-house or public building, or any building in which any person may be, or may be intended to be, employed in any manufacture, trade, or business.

83. He shall construct such ashpit of a capacity not exceeding in any case *six cubic feet*, or of such less capacity as may be sufficient to contain all dust, ashes, rubbish and dry refuse which may accumulate during a period not exceeding *one week* upon the premises to which ashpit may belong.

84. He shall construct such ashpit of flagging, or of slate, or of good brickwork, at least *nine inches* thick, and rendered inside with good cement or properly asphalted.

He shall construct such ashpit so that the floor thereof shall be at a height of not less than *three inches* above the surface of the ground adjoining such ashpit, and he shall cause such floor to be properly flagged or asphalted.

He shall cause such ashpit to be properly roofed over and ventilated, and to be furnished with a suitable door in such a position and so constructed and fitted as to admit of the convenient removal of the contents of such ashpit, and to admit of being securely closed and fastened for the effectual prevention of the escape of any of the contents of such ashpit.

85. He shall not cause or suffer any part of such ashpit to communicate with any drain.

86. Every person who shall construct a cesspool in connection with a building shall construct such cesspool at a distance of *feet* at the least from a dwelling-house or public building, or any building in which any person may be, or may be intended to be, employed in any manufacture, trade, or business.

87. He shall not construct such cesspool within the distance of *feet* from any water supplied for

use, or used or likely to be used by man for drinking or domestic purposes, or for manufacturing drinks for the use of man, or otherwise in such a position as to endanger the pollution of any such water.

88. He shall construct such cesspool in such a manner and in such a position as to afford ready means of access to such cesspool for the purpose of cleansing such cesspool, and of removing the contents thereof, and in such a manner and in such a position as to admit of the contents of such cesspool being removed therefrom, and from the premises to which such cesspool may belong, without being carried through any dwelling-house or public building, or any building in which any person may be, or may be intended to be, employed in any manufacture, trade, or business.

He shall not in any case construct such cesspool so that it shall have, by drain or otherwise, any outlet into or means of communication with any sewer.

89. He shall construct such cesspool of good brickwork in cement properly rendered inside with cement, and with a backing of at least *nine inches* of well puddled clay around and beneath such brickwork.

He shall also cause such cesspool to be arched or otherwise properly covered over, and to be provided with adequate means of ventilation.

With respect to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation.

90. In every case:—

Where, by a notice in writing in the form hereunto appended, or to the like effect, and signed by the clerk to the Sanitary Authority, and duly served upon or delivered to the owner of a building or part of a building erected after the day of , in the year one thousand eight hundred and , the Sanitary Authority shall certify that it has been represented to them that such building or part of a building is unfit for human habitation, and that, unless on or before such day as shall be specified in such notice, such owner, by a statement in writing under

his hand or under the hand of his agent duly authorized in that behalf, and addressed to and duly served upon or delivered to the Sanitary Authority, shall show sufficient cause why such building or part of a building shall not be declared unfit for human habitation, or unless, on such day and at such time and place as shall be specified in such notice, such owner personally or by his agent duly authorized in that behalf shall attend before the Sanitary Authority and show sufficient cause why such building or part of a building shall not be declared unfit for human habitation, the Sanitary Authority will declare such building or part of a building unfit for human habitation, and direct that such building or part of a building shall be closed, and prohibit the use for human habitation of such building or part of a building until the same shall have been rendered fit for human habitation :

And where such owner shall fail to show sufficient cause why such building or part of a building shall not be declared unfit for human habitation, and where, in consequence of such failure, the Sanitary Authority by their order, which shall be in writing under their seal in the form hereunto appended, or to the like effect, and shall be duly signed by their clerk, and which, or a copy of which shall be affixed in some conspicuous position in or upon such building or part of a building, may declare that such building or part of a building is unfit for human habitation, and may direct that, unless and until such building or part of a building shall have been rendered fit for human habitation, the same shall be closed, and the use thereof for human habitation shall be prohibited :—

A person shall not, after the date specified in such order and before such building or part of a building shall have been rendered fit for human habitation, knowingly inhabit or continue to inhabit, or knowingly cause or suffer to be inhabited such building or part of a building.

Form of Notice.

District of _____

To _____ of
 WHEREAS by a statement in writing under the hand of
 Medical Officer of Health (or Surveyor)
 of the Sanitary Authority for the district of _____
 , of which statement a copy is contained in the
 schedule hereunto annexed, it has been certified to the said Sanitary
 Authority that a certain building or part of a building situate at
 _____ in the said district is unfit for human
 habitation ;

And whereas it has been shown to the said Sanitary Authority
 that you are the owner of such building or part of a building ;

Now, I _____, clerk to the said Sanitary
 Authority, do hereby give you notice that, unless on or before the
 day of

18 _____, by a statement in writing under your hand or under the hand
 of an agent duly authorized by you in that behalf, and addressed to
 and duly served upon or delivered to the said Sanitary Authority,
 you shall show to the said Sanitary Authority sufficient cause why
 such building or part of a building shall not be declared unfit for
 human habitation ;

Or, unless you shall attend either personally or by an agent duly
 authorized in that behalf before the said Sanitary Authority at
 their office in _____ on
 day the _____ day of _____ 18 _____,

at _____ o'clock in the _____ noon, and shall then
 and there show to the said Sanitary Authority sufficient cause why
 such building or part of a building shall not be declared unfit for
 human habitation ;

The said Sanitary Authority, in pursuance of the powers con-
 ferred upon them in that behalf, will, by an order in writing under
 their seal, declare that such building or part of a building is unfit
 for human habitation, and direct that, unless and until such building
 or part of a building shall have been rendered fit for human habi-
 tation, the same shall be closed, and the use thereof for human
 habitation shall be prohibited.

Witness my hand this _____ day of _____
 in the year one thousand eight hundred and _____

Clerk to the Sanitary Authority.

Schedule.

Copy of Certificate.

Form of Order.

District of _____

To _____, of _____, and
to all others whom it may concern :

WHEREAS it has been certified to us, the Sanitary Authority for the district of _____, that a certain building or part of a building situate at _____ in the said district is unfit for human habitation ;

And whereas due notice of such certificate has been given to _____, the owner of such

building or part of a building, and the said _____ has failed to show sufficient cause why such building or part of a building shall not be declared unfit for human habitation ;

Now we, the said Sanitary Authority, in pursuance of the powers conferred upon us in that behalf, do hereby declare that such building or part of a building is unfit for human habitation ; and we do hereby direct that, unless and until such building or part of a building shall have been rendered fit for human habitation, the same shall be closed, and the use thereof for human habitation shall be prohibited.

Given under the common seal of the Sanitary Authority for the district of _____,
(L.S.) this _____ day of _____, in the
year one thousand eight hundred and _____

Clerk to the Sanitary Authority.

As to the giving of notices, deposit of plans and sections by persons intending to lay out streets or to construct buildings ; as to inspection by the Sanitary Authority ; and as to the power of such Authority to remove, alter, or pull down any work begun or done in contravention of the By Laws.

91. Every person who shall intend to lay out a street shall give to the Sanitary Authority notice in writing of such intention, which shall be delivered or

sent to their clerk at his or their office, or to their surveyor at his or their office, and shall at the same time deliver or send, or cause to be delivered or sent to their clerk at his or their office, or to their surveyor at his or their office, a plan and sections of such intended street, drawn to a scale of not less than *one inch* to every *forty-four feet*.

Such person shall show on every such plan the names of the owners of the land through or over which such street shall be intended to pass, the intended level and width, the points of the compass, the intended mode of construction, the intended name of such street and its intended position in relation to the streets nearest thereto, the size and number of the intended building lots, and the intended sites, height, class, and nature of the buildings to be erected therein, and the intended height of the division and fence walls thereon, and the name and address of the person intending to lay out such street.

Such person shall sign such plan, or cause the same to be signed by his duly authorized agent.

Such person shall show on every such section the levels of the present surface of the ground above some known datum, the intended level and rate or rates of inclination of the intended street, the level and inclinations of the streets with which it is intended that such street shall be connected, and the intended level of the lowest floors of the intended buildings.

92. Every person who shall intend to erect a building shall give to the Sanitary Authority notice in writing of such intention, which shall be delivered or sent to their clerk at his or their office, or to their surveyor at his or their office, and shall at the same time deliver or send, or cause to be delivered or sent to their clerk at his or their office, or to their surveyor at his or their office, complete plans and sections of every floor of such intended building, which shall be drawn to a scale of not less than *one inch* to every *eight feet*, and shall show the position, form, and dimensions of the several parts of such building, and of every watercloset, earthcloset, privy, ashpit, cesspool, well, and all other appurtenances.

Such person shall at the same time deliver or send, or cause to be delivered or sent to the clerk to the Sanitary Authority at his or their office, or to their surveyor at his or their office, a description in writing of the materials of which it is intended that such building shall be constructed, and of the intended mode of drainage and means of water supply.

Such person shall at the same time deliver or send, or cause to be delivered or sent to the clerk to the Sanitary Authority at his or their office, or to their surveyor at his or their office, a block plan of such building, which shall be drawn to a scale of not less than *one inch* to every *forty-four feet*, and shall show the position of the buildings and appurtenances of the properties immediately adjoining, the width and level of the street in front, and of the street, if any, at the rear of such building, the level of the lowest floor of such building, and of any yard or ground belonging thereto.

Such person shall likewise show on such plan the intended lines of drainage of such building, and the intended size, depth, and inclination of each drain; and the details of the arrangement proposed to be adopted for the ventilation of the drains.

93. Every person who shall intend to lay out or construct a street, or to erect a building, or otherwise to execute any work to which any of the By Laws relating to new streets and buildings may apply, shall before beginning to lay out or construct such street, or to erect such building, or to execute such work, deliver or send, or cause to be delivered or sent to the surveyor of the Sanitary Authority at his or their office notice in writing, in which shall be specified the date on which such person will begin to lay out or construct such street, or to erect such building, or to execute such work.

Such person shall also, before proceeding to cover up any sewer or drain, or any foundation of a building, deliver or send, or cause to be delivered or sent to the surveyor of the Sanitary Authority at his or their office notice in writing, in which shall be specified the date on which such person will proceed to cover up such sewer, drain, or foundation.

If such person neglect or refuse to deliver or send any such notice, or to cause any such notice to be delivered or sent to such surveyor, and if such surveyor, on inspecting any work in connection with such street or building, or such other work as aforesaid, finds that such work is so far advanced that he cannot ascertain whether anything required by any By Law relating to new streets or buildings has been done contrary to such By Law, or whether anything required by such By Law to be done has been omitted to be done, and if, within a reasonable time after such survey or inspection such person shall, by notice in writing under the hand of such surveyor, be required, within a reasonable time which shall be specified in such notice, to cause so much of such work as prevents such surveyor from ascertaining whether anything has been done or omitted to be done as aforesaid to be cut into, laid open, or pulled down to a sufficient extent to enable such surveyor to ascertain whether anything has been done or omitted to be done as aforesaid, such person shall within the time specified in such notice cause such work to be so cut into, laid open, or pulled down.

94. In every case :—

Where a person who shall lay out or construct a street, or shall erect a building, or shall execute any other work to which the By Laws relating to new streets and buildings may apply, shall, at any reasonable time during the progress or after the completion of the laying out or construction of such streets, or the erection of such building, or the execution of such work, receive from the surveyor of the Sanitary Authority notice in writing specifying any matters in respect of which the laying out or construction of such street, the erection of such building, or the execution of such work may be in contravention of any By Law relating to new streets or buildings, and requiring such person within a reasonable time, which shall be specified in such notice, to cause anything done contrary to any such By Law to be amended, or to do anything which by any such By Law may be required to be done, but which has been omitted to be done :—

Such person shall, within the time specified in such

notice, comply with the several requirements thereof so far as such requirements relate to matters in respect of which the laying out or construction of such street, the erection of such building, or the execution of such work may be in contravention of any such By Law.

Such person, within a reasonable time after the completion of any work which may have been executed in accordance with any such requirement, shall deliver or send, or cause to be delivered or sent to the surveyor of the Sanitary Authority at his or their office notice in writing of the completion of such work, and shall, at all reasonable times within a period of days after such notice shall have been so delivered or sent, afford such surveyor free access to such work for the purpose of inspection.

95. Every person who shall lay out or construct a street, or shall erect a building, or shall execute any other work to which any of the By Laws relating to new streets and buildings shall apply, shall, at all reasonable times, during the laying out or construction of such street, or the erection of such building, or the execution of such work, afford the surveyor of the Sanitary Authority free access to such street, building, or work for the purpose of inspection.

96. Every person who shall lay out or construct a street shall, within a reasonable time after the completion of the laying out or construction of such street, deliver or send, or cause to be delivered or sent to the surveyor of the Sanitary Authority, at his or their office, notice in writing of the completion of the laying out or construction of such street, and shall, at all reasonable times, within a period of days after such notice shall have been so delivered or sent, afford such surveyor free access to such street for the purpose of inspection.

97. Every person who shall erect a building shall, within a reasonable time after the completion of the erection of such building, deliver or send, or cause to be delivered or sent to the surveyor of the Sanitary Authority, at his or their office, notice in writing of the completion of the erection of such building, and shall, at all reasonable times, within a period of days after such notice shall have been so delivered or

sent, and before such building shall be occupied, afford such surveyor free access to every part of such building for the purpose of inspection.

Penalties.

98. Every person who shall offend against any of the foregoing By Laws shall be liable for every such offence to a penalty of _____, and in the case of a continuing offence to a further penalty of _____ for each day after written notice of the offence from the Sanitary Authority:

Provided, nevertheless, that the justices or court before whom any complaint may be made or any proceedings may be taken in respect of any such offence may, if they think fit, adjudge the payment as a penalty of any sum less than the full amount of the penalty imposed by this By Law.

99. If any work to which any of the By Laws relating to new streets and buildings may apply be begun or done in contravention of any such By Law, the person by whom such work shall be so begun or done, by a notice in writing, which shall be signed by the clerk to the Sanitary Authority, and shall be duly served upon or delivered to such person, shall be required on or before such day as shall be specified in such notice by a statement in writing under his hand or under the hand of an agent duly authorized in that behalf, and addressed to and duly served upon the Sanitary Authority, to show sufficient cause why such work shall not be removed, altered, or pulled down; or shall be required on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorized in that behalf before the Sanitary Authority, and show sufficient cause why such work shall not be removed, altered, or pulled down.

If such person shall fail to show sufficient cause why such work shall not be removed, altered, or pulled down, the Sanitary Authority shall be empowered, subject to any statutory provision in that behalf, to remove, alter, or pull down such work.

For fixing and from time to time varying the number of lodgers who may be received into a common lodging-house, and for the separation of the sexes therein ; and For promoting cleanliness and ventilation in such houses ; and For the giving of notices and taking precautions in the case of any infectious disease ; and Generally for the well ordering of such houses.

Form of Notice.

Now I, _____, clerk to the said Sanitary Authority, do hereby give you notice that, in the exercise of the powers conferred upon them in that behalf, the said Sanitary Authority have fixed as the maximum number of lodgers authorized to be received at any one time into such house, and into the several rooms therein, the number specified in respect of such house and of each of such rooms in the Schedule hereunto appended.

Schedule.

District of

Common lodging-house situated at

Name of keeper

The maximum number of lodgers authorized to be received at any one time into this house is

The maximum number of lodgers authorized to be received at any one time into each of the several rooms in this house is the number specified in respect of such room in the appropriate column of the following table:—

—	Description or Number of Room.	Dimensions or Cubical Contents of Room.	Maximum Number of Lodgers.
Ground storey.			
First storey.			
Second storey.			
Topmost storey.			

For the purposes of this notice every two children under the age of ten years may be counted as one lodger.

Witness my hand this day of 18 .

Clerk to the Sanitary Authority.

2. A keeper of a common lodging-house, in any case where the Sanitary Authority may, from time to time determine that it is expedient to vary the number fixed

Form of Notice.

Now I, _____, clerk to the said Sanitary Authority, do hereby give you notice that from and after the day of _____, the maximum number of lodgers authorized to be received at any one time into such house and into the several rooms therein shall be the number specified in respect of such house and of each of such rooms in the Schedule hereunto appended.

2 c 2

any one time into each of the several rooms in this house is the number specified in respect of such room in the appropriate column of the following table:—

—	Description or Number of Room.	Dimensions or Cubical Contents of Room.	Maximum Number of Lodgers.
	Ground storey.		
	First storey.		
	Second storey.		
	Topmost storey.		

For the purposes of this notice every two children under the age of *ten years* may be counted as one lodger.

Witness my hand this day of 18 .

Clerk to the Sanitary Authority.

3. A keeper of a common lodging-house shall not, except in such cases as are hereinafter specified, cause or suffer any person of the male sex above the age of *ten years* to use or occupy any room which may be used or occupied as a sleeping apartment by persons of the female sex.

Such keeper shall not, except in such cases as are hereinafter specified, cause or suffer any person of the female sex to use or occupy any room which may be used or occupied as a sleeping apartment by persons of the male sex above the age of *ten years* :

Provided that this By Law shall not be taken to

prohibit the use and occupation by a husband and wife of any room which may not be used or occupied by any other person of either sex above the age of *ten years*, or which may be used, in accordance with the provisions of the By Law in that behalf, as a sleeping apartment for two or more married couples.

4. He shall cause every room therein which may be appointed for use and occupation as a sleeping apartment by two or more married couples to be so furnished or fitted that every bed, when in use and occupation, shall be effectually screened from the view of any occupant of any other bed, by means of a partition of wood or other solid material, which shall be constructed and fixed or placed so as to allow adequate means of access to the bed which such partition is intended to screen, and so as to extend upwards throughout the whole length and breadth of such bed to a sufficient height above such bed, and downwards to a distance of not more than *six inches* above the level of the floor.

5. He shall cause every yard, area, forecourt, or other open space within the curtilage of the premises to be maintained at all times in good order, and to be thoroughly cleansed, from time to time, as often as may be reasonably necessary for the purpose of keeping such yard, area, forecourt, or other open space in a clean and wholesome condition.

6. He shall cause the floor of every room or passage and every stair in such house to be thoroughly swept once at least in every day, before the hour of *ten* in the forenoon, and to be thoroughly washed once at least in every week.

7. He shall cause every window, every fixture or fitting of wood, stone, or metal, and every painted surface in such house to be thoroughly cleansed, from time to time, as often as shall be requisite.

8. He shall cause all bed-clothes and bedding, and every bedstead used in such house, to be thoroughly cleansed, from time to time, as often as shall be requisite for the purpose of keeping such bed-clothes, bedding, and bedstead in a clean and wholesome condition.

9. He shall, for the use of the lodgers received into such house, cause to be provided a sufficient number of

basins or other receptacles for water, of adequate capacity and suitably placed, and a sufficient supply of water and a sufficient number of towels for use in connection with such basins or other receptacles.

He shall cause such basins or receptacles to be kept clean and in good order, and the supply of towels to be renewed from time to time, as often as may be requisite.

10. He shall cause all solid or liquid filth or refuse to be removed once at least in every day before the hour of *ten* in the forenoon from every room in such house, and shall once at least in every day cause every vessel, utensil, or other receptacle for such filth or refuse to be thoroughly cleansed.

11. He shall cause the seat, floor, and walls of every watercloset, earthcloset, or privy belonging to such house to be thoroughly cleansed, from time to time, as often as may be necessary for the purpose of keeping such seat, floor, and walls in a clean and wholesome condition.

12. He shall cause every part of the structure of every watercloset belonging to such house to be maintained at all times in good order, and every part of the apparatus of such watercloset and every drain or means of drainage, with which such watercloset may communicate, to be maintained at all times in good order and efficient action.

13. He shall cause every earthcloset or privy belonging to such house, and every receptacle for filth provided or used in or in connection with such earthcloset or privy to be maintained at all times in good order and in a wholesome condition.

He shall cause all such means or apparatus as may be provided or used in or in connection with such earthcloset or privy and such receptacle, for the frequent and effectual application of dry earth or other deodorizing substance to any filth deposited in such receptacle, to be maintained at all times in good order and efficient action.

He shall cause a sufficient supply of such dry earth or other deodorizing substance to be, from time to time, provided for use in such earthcloset, privy, or receptacle for filth, and shall cause such dry earth or other deodo-

rizing substance to be frequently and effectually applied to such filth, or he shall cause such dry earth or other deodorizing substance as may, from time to time, be applied to such house, in pursuance of the statutory provision in that behalf, by the Sanitary Authority or by any person with whom they may contract for the purpose, to be frequently and effectually applied to such filth.

14. He shall cause every ashpit belonging to such house to be maintained at all times in good order and in a wholesome condition.

He shall not cause or suffer any filth or wet refuse to be thrown into any ashpit constructed and adapted for use only as a receptacle for ashes, dust, and dry refuse.

15. He shall cause all such means of ventilation as may be provided in or in connection with any room or passage in such house and in or in connection with any watercloset, earthcloset, or privy belonging to such house to be maintained at all times in good order and efficient action.

16. He shall, except in such cases as are hereinafter specified, cause every window in every room in such house, which may be appointed for use and occupation as a sleeping apartment, to be opened and to be kept fully open for *one hour* at least in the forenoon, and for *one hour* at least in the afternoon of every day:

Provided that such keeper shall not be required, in pursuance of this By Law, to cause any such window to be opened or to be kept open at any time when the state of the weather is such as to render it necessary that the window should be closed, or when any bed in such room may be occupied by any lodger in consequence of sickness or of other sufficient cause.

17. He shall cause the bed-clothes of every bed in such house to be removed from such bed as soon as conveniently may be after such bed shall have been vacated by any lodger, and shall cause all such bed-clothes and the bed from which such bed-clothes may have been removed to be freely exposed to the air for *one hour* at least in the forenoon, or for *one hour* at least in the afternoon of every day.

18. He, immediately after he shall have been informed or shall have ascertained that any lodger in such house is ill of any infectious disease, shall adopt all such precautions as may be necessary to prevent the spread of such infectious disease.

Such keeper shall not, at any time while such lodger is suffering from such infectious disease, cause or allow any other person, except the wife or any other relative of such lodger, or except a person voluntarily in attendance on such lodger, to use or occupy the same room as such lodger.

Where, in pursuance of the statutory provision in that behalf, the Sanitary Authority may order the removal of such lodger to a hospital or other place for the reception of the sick, such keeper, on being informed of such order, shall forthwith take all such steps as may be requisite on his part to secure the safe and prompt removal of such lodger in compliance with the order of the Sanitary Authority, and shall, in and about such removal, adopt all such precautions as, in accordance with any instructions which he may receive from the Medical Officer of Health, may be most suitable for the circumstances of the case.

Where, in consequence of the illness of such lodger, there may be reasonable grounds for apprehending the spread of infection through the admission of lodgers to any room or rooms in such house, or through the admission to such room or rooms of the maximum number of lodgers authorized to be received therein, such keeper, after being furnished with the necessary instructions from the Medical Officer of Health, and until the grounds for apprehending the spread of infection shall have been removed, shall cease to receive any lodger in such room or rooms, or shall receive therein such number of lodgers, being less than the maximum number, as the exigencies of the case may require.

Such keeper shall, immediately after the death, removal, or recovery of any lodger who may have been ill of any infectious disease, give written notice thereof to the Medical Officer of Health, and shall, as soon as conveniently may be, cause every part of the room which may have been occupied by such lodger to

be thoroughly cleansed and disinfected, and shall also cause every article in such room, which may be liable to retain infection, to be in like manner cleansed and disinfected unless the Sanitary Authority shall have ordered the same to be destroyed.

He shall comply with all instructions of the Medical Officer of Health as to the proper cleansing and disinfection of the room and articles.

When the same shall have been thoroughly cleansed and disinfected, in accordance with such instructions, he shall give written notice thereof to the Medical Officer of Health; and, until two days from the giving of such notice shall have elapsed, and unless and until by such cleansing and disinfection the necessary precautions for preventing the spread of disease shall have been duly taken, such keeper shall not cause or suffer any other lodger to be received into the room which, in the case hereinbefore specified, may have been exposed to infection.

19. He shall not, at any time, cause or suffer any room which may be appointed for use as a kitchen or scullery to be used or occupied as a sleeping apartment.

20. He shall not cause or suffer any bed in any room which may be used as a sleeping apartment by persons of the male sex above the age of *ten years*, to be occupied at any one time by more than one such person.

21. He shall not cause or suffer any lodger to occupy any bed in such house at any time within the period of *eight* hours after such bed shall have been vacated by the last preceding occupant thereof.

22. He shall cause every room in such house, which may be appointed for use and occupation as a sleeping apartment, to be furnished with such number of beds and bedsteads, and with such a supply of bedclothes and of necessary utensils as may be sufficient for the requirements of the number of lodgers received into such room.

23. Every keeper of a common lodging-house, on receiving from the Sanitary Authority a notice or placard wherein shall be stated the description or number of the room to which such notice or placard may apply, and the maximum number of lodgers autho-

ried to be received at any one time in such room, shall put up or affix and continue such notice or placard in a suitable and conspicuous position in such room, and in such a manner that the words and figures in such notice or placard may be clearly and distinctly visible and legible.

He shall not, at any time, wilfully conceal, deface, alter, or obliterate any letter or figure in such notice or placard, or wilfully or carelessly injure or destroy such notice or placard.

24. Every keeper of a common lodging-house, on receiving from the Sanitary Authority, for the purpose of exhibition in such house or in any room therein, a copy or copies of any By Law or By Laws for the time being in force with respect to common lodging-houses, shall put up or affix and continue such copy or copies in a suitable and conspicuous position in such house, or in such room, and in such a manner that the contents of such copy or copies may be clearly and distinctly visible and legible.

He shall not, at any time, wilfully conceal, deface, alter, or obliterate any part of the contents of such copy or copies, or wilfully or carelessly injure or destroy such copy or copies.

25. Every keeper of a common lodging-house who shall offend against any of the foregoing By Laws shall be liable for every such offence to a penalty of
Penalty. , and in the case of a continuing offence to a further penalty of for each day after written notice of the offence from the Sanitary Authority:

Provided, nevertheless, that the justices or court before whom any complaint may be made or any proceedings may be taken in respect of any such offence may, if they think fit, adjudge the payment of a penalty of any sum less than the full amount of the penalty imposed by this By Law.

(12.) BY LAWS WITH RESPECT TO SLAUGHTER-HOUSES.

*For the licensing, registering, and inspection of slaughter-houses,
For preventing cruelty therein,
For keeping the same in a cleanly and proper state,
For removing filth at least once in every twenty-four hours,
and
Requiring such slaughter-houses to be provided with a sufficient supply of water.*

1. Every person who shall apply to the Sanitary Authority for a licence for the erection of any premises to be used and occupied as a slaughter-house shall furnish in the form hereunto appended a true statement of the particulars therein required to be specified.

FORM OF APPLICATION FOR A LICENCE

To erect premises for use and occupation as a Slaughter-house.

To the Sanitary Authority for the District of

I, _____, of _____, do hereby apply to you for a licence, in pursuance of the statutory provisions in that behalf, for the erection of certain premises to be used and occupied as a slaughter-house; and I do hereby declare that to the best of my knowledge and belief the Schedule hereunto annexed contains a true statement of the several particulars therein set forth with respect to the said premises.

Schedule.

1. Boundaries, area and description of the proposed site of the premises to be erected for use and occupation as a slaughter-house.

2. Description of the premises to be erected on such site:—

(a) Nature, position, form, superficial area and cubical contents of the several buildings therein comprised.

Schedule—continued.

2. Description of the premises to be erected on such site—continued.

(b.) Extent of paved area in such buildings, and materials to be employed in the paving of such area.

(c.) Mode of construction of the internal surface of the walls of such buildings, and materials to be employed in such construction.

(d.) Means of water supply,—position, form, materials, mode of construction and capacity of the several cisterns, tanks, or other receptacles for water to be constructed for permanent use in or upon the premises.

(e.) Means of drainage,—position, size, materials, and mode of construction of the several drains.

(f.) Means of lighting and ventilation.

(g.) Means of access for cattle from the nearest street or public thoroughfare.

(h.) Number, position, and dimensions of the several stalls, pens, or lairs to be provided on the premises.

(i.) Number of animals for which accommodation will be provided in such stalls, pens, or lairs, distinguishing—

1. Oxen.
2. Calves.
3. Sheep or lambs.
4. Swine.

Witness my hand this

day of

18 .

(Signature of Applicant.)

(Address of Applicant.)

2. Every person who shall apply to the Sanitary Authority for a licence for the use and occupation of any premises as a slaughter-house shall furnish in the form hereunto appended a true statement of the particulars therein required to be specified.

FORM OF APPLICATION FOR A LICENCE

For the use and occupation of premises as a Slaughter-house.

To the Sanitary Authority for the District of

I, _____, of _____, do hereby apply to you for a licence, in pursuance of the statutory provisions in that behalf, for the use and occupation as a slaughter-house of the premises hereinafter described; and I do hereby declare that to the best of my knowledge and belief the Schedule hereunto annexed contains a true statement of the several particulars therein set forth with respect to the said premises.

Schedule.

1. Situation and boundaries of the premises to be used and occupied as a slaughter-house.

2. Christian name, surname, and address of the owner of the premises.

3. Nature and conditions of applicant's tenure of the premises:—

(a.) For what term; and whether by lease or otherwise.

(b.) Whether applicant is sole owner, lessee, or tenant; or whether applicant is jointly interested with any other person or persons, and if so, with whom.

*Schedule—continued.***4. Description of the premises :—**

(a.) Nature, position, form, superficial area, and cubical contents of the several buildings therein comprised.

(b.) Extent of paved area in such buildings, and materials employed in the paving of such area.

(c.) Mode of construction of the internal surface of the walls of such buildings, and materials employed in such construction.

(d.) Means of water supply—position, form, materials, mode of construction and capacity of the several cisterns, tanks, or receptacles for water, constructed for permanent use in or upon the premises.

(e.) Means of drainage,—position, size, materials, and mode of construction of the several drains.

(f.) Means of lighting and ventilation.

(g.) Means of access for cattle from the nearest street or public thoroughfare.

(h.) Number, position, and dimensions of the several stalls, pens, or lairs provided on the premises.

(i.) Number of animals for which accommodation will be provided in such stalls, pens, or lairs, distinguishing—

1. Oxen.
2. Calves.
3. Sheep or lambs.
4. Swine.

Witness my hand this

day of

18 .

(Signature of Applicant.)

(Address of Applicant.)

WITH RESPECT TO SLAUGHTER HOUSES. 399

3. Every person to whom the Sanitary Authority may have resolved that a licence be granted to erect premises for use and occupation as a slaughter-house shall be entitled to receive from the Sanitary Authority a licence in the form hereunto appended, or to the like effect.

FORM OF LICENCE

To erect premises for use and occupation as a Slaughter-house.

No. of
Licence } —

Reference to
Folio in Register } —

District of

Whereas application has been made to us, the Sanitary Authority for the district of , by , of , for a licence to erect on a site within the said district certain premises for use and occupation as a slaughter-house:

Now, we, the said Sanitary Authority, in pursuance of the powers conferred upon us by the statutory provisions in that behalf, do hereby license the said , of , to erect for use and occupation as a slaughter-house upon the site defined or described in the Schedule hereunto annexed the premises whereof the description is set forth in the said Schedule.

Schedule.

Boundaries, Area, and Description of the proposed Site of the Premises to be erected for Use and Occupation as a Slaughter-house.	Description of the Premises to be erected for Use and Occupation as a Slaughter-house.

(L.S.) Given under the Common Seal of the Sanitary Authority for the district of this day of , in the year One thousand eight hundred and

Clerk to the Sanitary Authority.

4. Every person to whom the Sanitary Authority may have resolved that a licence be granted for the use and occupation of any premises as a slaughter-house shall be entitled to receive from the Sanitary Authority a licence in the form hereunto appended, or to the like effect.

FORM OF LICENCE

For the use and occupation of premises as a Slaughter-house.

No of
Licence } ———
Reference to
Folio in Register } ———

District of

Whereas application has been made to us, the Sanitary Authority for the district of _____, by _____, of _____, for a licence for the use and occupation of certain premises as a slaughter-house:

Now, we, the said Sanitary Authority, in pursuance of the powers conferred upon us by the statutory provisions in that behalf, do hereby license the said _____, of _____, to use and occupy as a slaughter-house the premises whereof the situation and description are set forth in the Schedule hereunto annexed.

Schedule.

Situation of the Premises to be Used and Occupied as a Slaughter-house.	Description of the Premises to be Used and Occupied as a Slaughter-house.

(L.S.) Given under the Common Seal of the Sanitary Authority for the district of _____, this _____ day of _____, in the year One thousand eight hundred and _____

Clerk to the Sanitary Authority.

5. Every person who may have obtained from the Sanitary Authority, in accordance with the provisions of the By Law in that behalf, a licence to erect any

premises for use and occupation as a slaughter-house, or a licence for the use and occupation of any premises as a slaughter-house, shall register such premises at the office of the Sanitary Authority.

He shall, for such purpose, apply, by notice in writing addressed to the clerk to the Sanitary Authority, to register such premises; and thereupon it shall be the duty of the clerk to the Sanitary Authority, within a reasonable time after the receipt of such notice in writing, to enter in a book to be provided by the Sanitary Authority in the form hereunto appended the particulars therein to be specified.

FORM OF REGISTER OF SLAUGHTER-HOUSES.

District of _____						
Folio _____						
Date of Registration.	Date of Licence.	Number of Licence.	Christian Name, Surname, and Address of Owner or Proprietor of Slaughter-house.	Christian Name, Surname, and Address of Occupier of Slaughter-house.	Situation of Slaughter-house.	Number of Animals for which Accommodation is provided on the Premises.

6. Every occupier of a slaughter-house shall, at all reasonable times, afford free access to every part of the premises to the Medical Officer of Health, the Inspector of Nuisances, or the Surveyor of the Sanitary Authority, or to any committee specially appointed by the Sanitary authority in that behalf, for the purpose of inspecting such premises.

7. He shall cause every animal brought to such

slaughter-house for the purpose of being slaughtered, and confined in any pound, stall, pen, or lair upon the premises previously to being slaughtered, to be provided during such confinement with a sufficient quantity of wholesome water.

8. Every occupier of a slaughter-house and every servant of such occupier and every other person employed upon the premises in the slaughtering of cattle shall, before proceeding to slaughter any bull, ox, cow, heifer, or steer, cause the head of such animal to be securely fastened so as to enable such animal to be felled with as little pain or suffering as practicable, and shall in the process of slaughtering any animal use such instruments and appliances, and adopt such method of slaughtering and otherwise take such precautions as may be requisite to secure the infliction of as little pain or suffering as practicable.

9. Every occupier of a slaughter-house shall cause the means of ventilation provided in or in connection with such slaughter-house to be kept at all times in proper order and efficient action; and so that the ventilation shall be by direct communication with the external air.

10. He shall cause the drainage provided in or in connection with such slaughter-house to be kept at all times in proper order and efficient action.

11. He shall cause every part of the internal surface of the walls and every part of the floor or pavement of such slaughter-house to be kept at all times in good order and repair, so as to prevent the absorption therein of any blood or liquid refuse or filth which may be spilled or splashed thereon, or any offensive or noxious matter which may be deposited thereon or brought in contact therewith.

He shall cause every part of the internal surface above the floor or pavement of such slaughter-house to be thoroughly washed with hot lime-wash at least four times in every year; that is to say, at least once during the periods between the *first* and *tenth* of *March*, the *first* and *tenth* of *June*, the *first* and *tenth* of *September*, and the *first* and *tenth* of *December* respectively.

He shall cause every part of the floor or pavement of such slaughter-house, and every part of the internal

surface of every wall on which any blood or liquid refuse or filth may have been spilled or splashed, or with which any offensive or noxious matter may have been brought in contact during the process of slaughtering or dressing in such slaughter-house, to be thoroughly washed and cleansed within three hours after the completion of such slaughtering or dressing.

12. An occupier of a slaughter-house shall not at any time keep any dog, or cause or suffer any dog to be kept in such slaughter-house.

He shall not at any time keep, or cause or suffer to be kept in such slaughter-house any animal of which the flesh may be used for the food of man, unless such animal be so kept in preparation for the slaughtering thereof upon the premises.

He shall not at any time keep any cattle, or cause or suffer any cattle to be kept in such slaughter-house for a longer period than may be necessary for the purpose of preparing such cattle, whether by fasting or otherwise, for the process of slaughtering.

If, at any time, he keep, or suffer to be kept in such slaughter-house any cattle for the purpose of preparation whether by fasting or otherwise, for the process of slaughtering, he shall not cause or suffer such cattle to be confined elsewhere than in the pounds, stalls, pens or lairs provided on the premises.

13. He shall cause the hide or skin, fat, and offal of every animal slaughtered on the premises to be removed therefrom within twenty-four hours after the completion of the slaughtering of such animal.

14. He shall cause the means of water supply provided in or in connection with such slaughter-house to be kept, at all times, in proper order and efficient action, and shall provide for use on the premises a sufficient supply of water for the purpose of thoroughly washing and cleansing the floor or pavement, every part of the internal surface of every wall of such slaughter-house, and every vessel or receptacle which may be used for the collection and removal from such slaughter-house of any blood, manure, garbage, filth, or other refuse products of the slaughtering of any cattle or the dressing of any carcass on the premises.

15. He shall provide a sufficient number of vessels or receptacles, properly constructed of galvanized iron or other non-absorbent material, and furnished with closely fitting covers for the purpose of receiving and conveying from such slaughter-house all blood, manure, garbage, filth, or other refuse products of the slaughtering of any cattle or the dressing of any carcass on the premises.

He shall forthwith upon the completion of the slaughtering of any cattle or the dressing of any carcass in such slaughter-house cause such blood, manure, garbage, filth, or other refuse products to be collected and deposited in such vessels or receptacles, and shall cause all the contents of such vessels or receptacles to be removed from the premises at least once in every twenty-four hours.

He shall cause every such vessel or receptacle to be thoroughly cleansed immediately after such vessel or receptacle shall have been used for such collection and removal, and shall cause every such vessel or receptacle when not in actual use to be kept thoroughly clean.

16. Every person who shall offend against any of the foregoing By Laws for the registering and inspection of slaughter-houses, for preventing cruelty therein, for keeping the same in a cleanly and proper state, for removing filth at least once in every twenty-four hours, and for requiring such slaughter-houses to be provided with a sufficient supply of water, shall be liable for every such offence to a penalty of *five* pounds, and in the case of a continuing nuisance to a penalty of *ten* shillings for every day during which such nuisance shall be continued after the first conviction for the first offence:

Provided, nevertheless, that the justices or court before whom any complaint may be made or any proceedings may be taken in respect of any such offence may, if they think fit, adjudge the payment as a penalty of any sum less than the full amount of the penalty imposed by this By Law.

Note.—The Board recommend that in lieu of "Sanitary Authority," the proper distinctive title of the authority should appear in the By Laws by an interpretation of the word at the commencement of the code, or otherwise.—W. G. L.

MEMORANDUM.

The Local Government Board have affixed to every separate series of the By Laws promulgated by them a statement of the authority under which the series has been framed, together with some special observations.

They have also addressed a general introductory letter to each of the two Sanitary Authorities explanatory of their proceeding in framing the model, and giving some advice as to the course to be pursued by those Authorities.

From that letter I annex the following passage:—

“The Board desire me to add a few remarks in explanation of the method of procedure which they suggest for adoption by Sanitary Authorities in submitting By Laws for revision and confirmation.

“The Board have caused to be printed on foolscap paper, with an ample margin for annotations, the whole of the clauses comprised in the model series, of which copies accompany this circular. Every Sanitary Authority desirous of making new By Laws or of amending existing By Laws, will, on application to the Board, be supplied with the necessary draft forms. If, in any case, the model clauses require alteration to suit the special circumstances of a particular district, the proposed variations should be clearly shown in manuscript in the margin of the draft. The Board will then be readily able to direct their attention to these variations, and to state their views upon any points which may arise. When the final revision of the draft has been completed, and the Sanitary Authority have been informed of the decision of the Board with regard to the allowance or disallowance of the several clauses, a fair copy embodying the contents of the draft as revised, and carefully compared with the original to ensure the correction of possible errors, should be prepared for deposit at the office of the Sanitary Authority, and for inspection by the ratepayers.

"After the necessary notice of the intention of the Sanitary Authority to apply for confirmation of the By Laws, and after due consideration of any objections made by persons locally interested, the By Laws, with the common seal of the Sanitary Authority properly affixed at a meeting, of which the precise date should be notified at the end of each series, should be transmitted to the Board, together with copies of the newspapers containing the advertisement required by sect. 184.

"In order that delay in the confirmation of By Laws may be avoided, the Board desire to impress upon Sanitary Authorities the necessity for careful examination, with the original draft, of the fair copy deposited for inspection, and of the By Laws finally submitted to the Board. It is also important that the advertisement of the intention of the Sanitary Authority to apply for confirmation should be so framed as to comply strictly with the provisions of sect. 184; and, indeed, in all respects the requirements of that enactment should be fully satisfied."

It will be seen that this letter amplifies, and in some respects extends, the instructions which I had set out in p. 79 of this Essay, but there is not much material alteration.

INDEX OF STATUTES CITED.

	PAGE
20 Hen. 3, c. 10	128
15 Hen. 6, c. 6	160
3 Hen. 7, c. 9	63
12 Hen. 7, c. 6	63
19 Hen. 7, c. 7	64, 160
22 Hen. 8, c. 4	64
— c. 5	64, 96
23 Hen. 8, c. 4	226
21 Jas. 1, c. 16	230
13 Car. 2, c. 2	262
— c. 4	90
15 Car. 2, c. 11	91
20 Car. 2, c. 6	65, 129, 135
29 Car. 2, c. 7	92
9 & 10 Wm. 3, c. 44	12, 270
18 Geo. 2, c. 26	12
22 Geo. 3, c. 83	164
7 & 8 Geo. 4, c. 75	272
4 & 5 Wm. 4, c. 76	164
5 & 6 Wm. 4, c. 76	18, 65, 78, 97, 123, 141, 162, 163, 232, 238, 247, 250, 262, 276, 285
3 & 4 Vict. c. 97.	78, 164, 166, 207, 211
5 & 6 Vict. c. 55.	212
— c. 57.	246
7 & 8 Vict. c. 110	19, 81, 187, 195, 254
8 & 9 Vict. c. 16	19, 61, 78, 88, 189, 195, 212, 232, 241, 254
— c. 18	242
— c. 20.	20, 78, 88, 166, 188, 196, 207, 212, 233, 242, 253, 257
— c. 113	253, 254
9 & 10 Vict. c. 74	22, 40, 61, 166, 191, 232, 235, 241

	PAGE
10 & 11 Vict. c. 14	28, 29, 61, 78, 88, 167, 176, 189, 195, 232, 258
— c. 16	19, 61, 78, 88, 189, 196, 232
— c. 27	42, 78, 88, 167 175, 189, 232, 258
— c. 34	30, 31, 33, 35, 61, 78, 88, 168, 176, 189, 191, 195, 196, 208, 232, 233, 258
— c. 89	23, 36, 61, 78, 168, 176, 209, 233, 242, 258
11 & 12 Vict. c. 43	238, 243, 244, 246
— c. 63	16, 19, 24, 25, 27, 29, 30, 32, 39, 41, 61, 66, 78, 88, 114, 168, 176, 191, 205, 234, 235, 238, 239, 240, 247
14 & 15 Vict. c. 14	253
— c. 28	32, 35, 232, 256
— c. 34	283
15 & 16 Vict. c. 56	50, 170
16 & 17 Vict. c. 41	209
17 & 18 Vict. c. 104.	43, 170, 177, 190
— c. 112	20, 80, 171, 224, 235
18 & 19 Vict. c. 119	168, 191, 213, 235, 242, 246, 258, 284
— c. 120.	204, 242
20 & 21 Vict. c. 43	247
21 & 22 Vict. c. 90	49
— c. 98	16, 23, 24, 25, 27, 29, 30, 37, 66, 137, 142, 143, 150, 152, 163, 168, 191, 194, 204, 264, 266, 274

	PAGE		PAGE
22 Vict. c. 27	40, 171	35 & 36 Vict. c. 79	23, 33, 34, 163,
23 & 24 Vict. c. 30	40, 169		169, 174, 235
24 & 25 Vict. c. 61	38, 39, 191, 240	36 & 37 Vict. c. 83	259
———— c. 97	196	———— c. 38	173
25 & 26 Vict. c. 89	19, 61, 81, 188,	36 & 37 Vict. c. 55	49, 81, 170, 184
	195	———— c. 71	51, 61, 74, 81,
26 & 27 Vict. c. 92	21, 164, 166, 189,		172, 182, 194, 236,
	233		243, 260
———— c. 97	285	———— c. 86	179, 244
———— c. 124	3, 54, 62, 81, 173,	37 & 38 Vict. c. 43	286
	192, 236, 243, 286	———— c. 67	209
27 & 28 Vict. c. 48	173, 193, 236, 243,	———— c. 89	25, 34, 35, 143,
	259, 285		144, 163, 169, 173,
———— c. 113	53, 171, 181,		175, 191, 194
	192, 258		199, 205, 235
29 & 30 Vict. c. 89	53	38 & 39 Vict. c. 17	18, 45, 61, 62, 166,
———— c. 90	33, 35		173, 183, 185,
———— c. 122	41, 263		206, 216, 237,
30 & 31 Vict. c. 115	246		243
———— c. 146	277	———— c. 43	50, 81, 170, 184
31 & 32 Vict. c. 115	24, 191	———— c. 55	3, 18, 20, 23, 24,
32 & 33 Vict. c. 70	18		25, 27, 29, 30, 33,
33 & 34 Vict. c. 75	50, 61, 171, 178,		34, 35, 37, 38, 39,
	179, 193, 237, 244		41, 61, 65, 66, 74,
	281, 282		79, 81, 88, 92, 114,
———— c. 78	21, 37, 88, 166,		143, 144, 163, 169,
	177, 233, 242		173, 175, 176, 190,
34 & 35 Vict. c. 70	34, 169		191, 194, 196, 204,
———— c. 105	45, 61, 168, 180,		205, 209, 214, 232,
	194, 205, 237, 243		233, 234, 235, 238,
35 & 36 Vict. c. 38	49, 172, 210, 245		239, 240, 246, 248,
———— c. 75	23, 24		260
———— c. 76	3, 17, 55, 62, 81,	———— c. 77	10, 17, 18, 194
	174, 193, 196,	39 & 40 Vict. c. 19	280
	236, 243, 260	———— c. 45	279
———— c. 77	3, 17, 55, 62, 81,	———— c. 56	279
	174, 193, 196,	———— c. 79	281
	236, 243, 260		

INDEX OF CASES CITED.

A.		PAGE
Adams v. Bromley Local Board	153	
Adley v. Reeve	203	
Allen v. Tonbridge	37	
Anderton v. Rigby	274	
Anon C. (Comberbatch)	224	
— (Godbold)	117, 130	
— (Goldsborough)	69	
— (March)	135	
Arris v. Bradshaw	215	
B.		
Bab v. Clerk	198, 210	
Bailey v. Williamson	82	
Ballard v. Bennett	230	
Barber v. Boulton	108	
Bateson v. Oddy	37	
Bedford, Mayor of, v. Fox	122, 161	
Blackpool Local Board v. Bennett	97, 158, 261	
Bodwic v. Fennell	122, 220, 223	
Bonner's Case	141	
Bosworth v. Herne	91, 123, 136, 140, 219, 269	
Bricklayers v. Plasterers	56, 129	
Brown v. Holyhead Local Board	150, 151	
— v. The Great Eastern Railway Company	x, 276, 289	
Burgess v. Peacock	150	
Burton v. Spencer	70, 99	
Bury v. Cherryholm	277	
Butchers' Company v. Bullock	261	
— v. Morey	72	
C.		
Calder and Hebble Navigation Company v. Pilling	91, 204	

	PAGE
Cambridge, Mayor of, v. Herring	15, 116, 187
Carter v. Sanderson	118, 202, 210
Case v. Storey	37
Child v. Hudson's Bay Company	13
Chilton v. London and Croydon Railway Company	14, 213, 289
Clarke's Case	4, 210, 214, 217, 225
Clark v. Compton	126
— v. Denton	124, 158, 229
— v. Le Cren	124, 126
— v. Stanford	37
— v. Tucker	159, 215, 216
Clyde Navigation Company v. Barclay	278
Cocksedge v. Fanshaw	58
Colchester Corporation v. Goodwin	7, 122
Cooper v. Wandsworth Board of Works	204
Coopers' Company v. Allen	227
Corporation's Case	104, 253
Cousin v. Stockbridge	37
Cromwell's Case	56, 69, 146, 147, 228
Cuddon v. Eastwick	71, 72
Curtis v. Embery	37
D.	
Davenant v. Hurdis	7, 56, 77, 129
Davis v. Morgan	217
Dearden v. Townsend	ix, 265, 269
Dodwell v. University of Oxford	71
Doggerell v. Pokes	154
Drew v. Harlow	259
Dunston v. Imperial Gas Light Company	6

E.

	PAGE
Eagleton v. East India Company	12, 96, 271
Edmonds v. Waterman's Com- pany	ix, 88, 272
Edward's Case	132
Eginton v. Pearl	145, 266, 295
Ellington v. Cheney	220
Elwood v. Bullock	142, 159, 183
Everett v. Grapes	136
Exeter, Earl of, v. Smith	56, 214, 218, 225
——, Mayor of, v. Starre	90, 210, 228, 251

F.

Faulkner v. Elgie	75, 103
Fazakerley v. Wiltshire	72, 157
Feltmakers' Company v. Davis	221, 225
Fox v. Amhurst	276
Framework Knitters' Company v. Green	101, 118
Franklin v. Chauntrell	19, 147
—— v. Cromwell	56, 147, 228
—— v. Green	155
Freemantle v. Silk Throwsters	129
Frost v. Williams	206

G.

Garrett, <i>Ex parte</i>	61
Gape v. Hallam	253
Gavell v. Taaker	270
Gee v. Wilden	118
Gerrish v. Rodman	95
Gosling v. Veley	5, 9, 77
Gravesend Corporation v. Ed- munds	132, 155
Great Western Railway Com- pany v. Goodman	275
Green v. Mayor of Durham	76, 93, 113, 199
Groves v. Colby	219, 221
Guildford, Mayor of, v. Clark	71, 262
Gunmakers' Company v. Fell	130, 157, 221

H.

	PAGE
Hall v. Nixon	x, 97, 143, 204, 217
Hardcastle's Case	210
Harris v. Wakeman	59, 122, 269
Harrison v. Evans	90
—— v. Godman	123, 126, 227
—— v. Williams	231
Hattersley v. Burr	143
"Henry Morton" Case	275
Heaketh v. Braddock	58, 223
Higham v. Wright	278
Hills v. Hunt	131
Hoare v. The Metropolitan Board of Works	264
Hobbs v. Dance	267
Hoblyn v. The King	59, 105
Hollings v. Hungerford	220
Hopkins v. Mayor of Swansea	6, 250
Hopkinson v. Marquis of Exeter	11, 201
Horners' Company v. Barlow	74
Hurscott's Case	208

I.

Innholders' Company's Case	95
—— Company v. Gledhill	226
Ipswich Clothworkers' Case	263
—— Taylors' Case	94, 161, 263
—— v. Sherring	15, 133, 263

J.

James v. Tintney	147, 187
Jennings v. Great Northern Railway Company	266

K.

Kenrick v. Mayor of Northamp- ton	69
K. v. Arnold	215
—— v. Ashwell	60, 106
—— v. Dr. Askew	12
—— v. Attwood	110
—— v. Bird	106
—— v. Bowers	90
—— v. Breton	103
—— v. Bumstead	110, 153

	PAGE
K. v. Cambridge, Mayor of	200
— v. Castle	110, 253
— v. Clerk	68
— v. Coopers' Company of New- castle	134, 161
— v. Cowle	211
— v. Durham, Mayor of	93, 113
— v. Eye Corporation	273
— v. Faversham Fishermen	131,
	158, 198
— v. Ginever	59, 113
— v. Harrison	126, 127
— v. Hill	59
— v. Holland	105
— v. Johnson	60
— v. Marshall	200
— v. Phillips	108
— v. College of Physicians	12, 229
— v. Richardson	198
— v. Rippon Town	199
— v. Sharples	249
— v. Spencer	76, 103, 105, 109
— v. Tappenden	134
— v. Thame Churchwardens	122
— v. Tomlyn	105, 228
— v. Tunwell	108
— v. Vanacker	115
— v. Westwood	7, 12, 14, 60, 106,
	107, 109, 228
— v. Worcester, Chamberlain of	222,
	224, 230
— v. York, Sheriffs of	123, 128
King v. Clerk	210
Kirk v. Nowell	162, 198, 216

L.

Lambert v. Thornton	56, 82, 215
Latton v. Edbury	147
Leathby v. Webster	96
Leathersellers' Company v. Beecon	256
Lee v. Wallis	108, 159, 216
London Chamberlain's Case	4, 59,
	83, 99, 131, 217, 225
— Chamberlain v. Drink- water	125
—, City of, Case	86, 123,
	214, 216
— v. Coals	211

	PAGE
London, City of, v. Wood	7
— Corporation v. Barnar- diston	132, 187, 222
—, Mayor of, v. Vanacker	8, 90,
	115, 202, 269
Long v. Gray	11
Lyttleton v. Blackburne	11, 201

M

Marshall v. Smith	144, 234
Mayer v. Burslem Local Board	146, 207
Mitchell v. Reynolds	121
Moir v. Murray	122, 214, 217, 270
Mottram v. Eastern Counties Railway Company	188, 253, 258
Mounger v. Clare	122, 222
Murphy, <i>In re</i>	283

N.

Nevesby v. Webster	96
Newling v. Francis	8, 60
Norris v. Staps	7, 9, 133

O.

Orford Town Case	4
Oxon, Mayor of, v. Wildgoose	271

P.

Parry v. Berry	122
Payne v. Haughton	139
Pearson v. Mayor of Hull	95, 274
Perkins v. Company of Cutlers	253
Phillips v. Bury	62
Pierce v. Bartrum	136, 155, 220
Piper v. Chappell	98, 211, 221, 226
Player v. Archer	132, 222
— v. Bringman	124, 222
— v. Broadnox	139
— v. Jenkins	68, 139
— v. Jones and Edwards	139
— v. Osborne	139
— v. Pettit	210, 222
— v. Stowell	139
— v. Vere	139, 220

	PAGE
Poulterers' Company v. Phillips	271
Powell v. R.	254
Prigge v. Adams	187

Q.

Queen v. Darlington School Governors	152
— v. Dickenson	247, 263
— v. Frere	265
— v. Mary Wood	16, 183, 247
— v. Powell	109, 110, 253
— v. Robinson	158
— v. Saddlers' Company	89, 112, 158, 162, 268, 269
— v. Saunders	120

R.

Reg. v. Chantrell	247
— v. Dickenson	247, 263
— v. Lundie	157, 158
— v. Richmond	262
— v. Stephenson	277
Rex v. Breton	103
— v. Carlisle Mayor	76
— v. Castle	110, 253
— v. Cutbush	76, 103, 109
— v. Dean and Chapter of Dublin	202
— v. Sir T. Harrison	126
— v. Head	76, 105, 253
— v. Jay	201
— v. London City	
— v. Merchant Taylors of London	211
— v. Richardson	198
— v. Sharpley	249
— v. Spencer	76, 103, 105, 109
— v. Surgeons' Company	113
Rhymney Railway Company v. The Taff Vale Railway Company	267
Rippon Mayor's Case	198
Robinson v. Grossett	127
— v. Watkins	1, 140
Rogers v. Brunton	58
— v. Davenant	4

S.

	PAGE
Savage v. Booth	138, 154
Scarling v. Criett	56, 82, 228
Scriveners' Company v. Brook- ing	119
Shaw v. Furze	63, 224
— v. Pope	139
— v. Poynter	125, 228
Shiel v. Mayor of Sunderland	16, 264, 274
Shillitoe v. Thompson	137, 276
Silk Throwsters' Company v. Freemantle	129
Sills v. Brown	63
Skinner v. Usher	37
Slee v. Corporation of Bradford	153, 249
Spencer v. Burton	70, 99
Stationers' Company v. Salis- bury	10, 94, 158, 161
Surgeons of London v. Pilson	225
Sutton's Hospital Case	7
Taverner's Case	10, 115, 117
Tintney v. James	68, 147, 187
Tisdell v. Combe	273
Tobacco Pipe Makers' Company v. Woodroffe	116, 271
— v. Loder	116, 161, 184, 222, 231
Tong Street Local Board v. Seid	137
Tottenham Local Board v. Rowell	240
Totterdell v. Glazeby	220
Trinity House v. Crispin	73, 156
Tucker v. Rees	151
— v. The King	105

V.

Veley v. Burder	5, 7
Vintners' Company v. Passey	115, 227, 268

W.

Waggoner's Case	214
— v. Fish	128, 210, 214

	PAGE		PAGE
Waite v. Garston Local Board.	100,	Wokingham, Mayor of, v. Johnson	218, 273
	144		
Wallis Case	211	Wood v. Corporation of London	211, 219, 223
Wannell v. The City of London	127	—— v. Searl	97, 122
Wanstead Local Board v.		Woodard v. Eastern Railway	
Wooster	137	Company	265
Watson v. Clarke	230	Woolley v. Idle	122
Wells v. Cotterell.	83, 217	Wortley v. Nottingham Local	
West Ham Local Board v.		Board	101, 138
Maddams	240		
Wilford v. Masham	219	Y.	
Winchelsea Town Council Case	4		
Winchester, Mayor of, v. Wilks	122	York, Mayor of, v. Towne . . .	225



GENERAL INDEX.

- ACCEPTANCE of office, By Law as to, 19, 89, 114
Act of the Governing Board to enforce By Law, 203
Addition to the general law to be provided by By Law, 91
Admission, refusal of, 199
Alkali works, special rules and regulations for, 3, 54, 81, 285
 confirmation of, 173
 publication, 192
 penalties for breach, 236
 recovery of, 243
Alteration of By Law, 60; see *Addendum*, 279
 confirmation, 184
Amotion, enforcing of By Law by, 198
Appeal against conviction, 240, 242, 243, 246
Apprentices, By Laws relating to, 133
Arrest for breach of By Law, 210, 211
Ashpit in buildings, By Law as to, see *Appendix*, 374
Assaults in the Recreation Grounds and Markets, 92
Asses, Hackney, 38
Assessment, whether a By Law, 3
Associations, private, By Laws by, 131
Assumpsit, penalty recoverable in, 225
Attorney-General to consent to proceedings, 239
Authority for making By Law, 7, see *Addendum*, 280
 proof thereof, 252
Avoidance of Act for breach of By Law, 207

Bathing, public, 23
 forms of By Laws for, see *Appendix*, 308
 places, public, form of By Laws for, see *Appendix*, 314
Baths, By Laws for, 22
 confirmation of, 166
 publication of, 191

- Baths, By Laws for, penalties for breach of, 235
recovery of, 241
Form of, see *Appendix*, 302
- Billagenes*, meaning of the word, 2, 55
- Board of Trade may make By Laws, 18, 45; see *Trade*
- Bond, enforcing By Law by, 203
- Boats, Pleasure, By Laws for, 38
- Borough boundaries, enlargement of, 15
Municipal By Laws in, see *Municipal Corporations*, 162
- Breach of By Law, evidence of, 261
- Buildings, regulation of, 25
Form of By Laws for, see *Appendix*, 339
exempted, 343
- Burial Grounds, By Laws for, 39
- Business, regulation of, 19, 145
offensive, 27
- By Law, definition of, 1
authority for making, 7; see *Addendum*, 279
who can make it, 60
alteration of it, 60
repeal of it, 60
not set aside by usage, 63
may be revoked by Statute, 63
how kept in force, 65, 282
its operation on strangers, 66
beyond jurisdiction, 73
for part of the district, 74
how to be made, 75
by different authorities at the same time, 82
under custom, 82
the framing of, 83
the properties of, 85
confirmation of, 160, 279
publication of, 186, 280
enforcing of it, 197, 280
evidence in proceedings, 251
construction of, 268
Forms of, see *Appendix*, 289
- Canals, By Laws for Gunpowder on, 47
- Candidates, By Laws as to their qualification, 107

- Carriages, Hackney, 36, 140
 - on Tramways, 36
- Carts in London, By Laws as to, 138
- Certainty of By Laws, 93
- Certiorari*, 238, 246
- Cesspool in buildings, By Law as to, *see Appendix*, 375
- Charter authority for By Law, 13
 - effect of surrender, 15
 - making of By Law under, 77
- Chemists, qualification of, 49
 - confirmation of By Law relative to, 170
- Children, Nurse, protection of, 49
- Chimneys, form of By Law, *see Appendix*, 359
- Cleansing, 24
 - Forms of By Laws, *see Appendix*, 335, 336
- Closets in buildings, By Law for, *see Appendix*, 368
- Closing of buildings, By Law for, *see Appendix*, 376
- Club, By Laws in, 11
 - expulsion from, 201
- Commissioners, By Laws by, 19
 - publication thereof, 189
 - penalties on breach, 232
- Common Law remedies not superseded by By Laws, 90
- Common Lodging Houses, *see Lodging Houses*.
- Commons, By Laws for, 279
 - Metropolitan, By Laws for, 41
- Companies trading, By Laws by, 10, 128
 - publication of, 189
 - penalties on breach, 232
 - recovery of, 241
 - operation thereof on strangers, 72
 - controlled in London by the Corporation, 126
- Confirmation of By Laws, 160, 279, 280
 - its force, 161, 183
 - conjoint, 175
 - preliminary proceeding, 175, 299
 - not to be withdrawn or altered, 185
 - proof of, 256
- Conservators of the River Thames, By Laws by, 53
- Constitution of governing body, By Law as to, 102
 - electoral body, 105

- Construction of By Laws, 268
- Continuing offence by breach of By Law, 144, 235
 - limitation of time, 239
- Contracts differ from By Laws, 6
- Corporations, authority therein for making By Laws, 7
 - operation of By Law on members, 67
 - Municipal By Laws in, 18
 - how made by, 78
 - construction of, 273, 276
- Court for recovery of penalty by action, 222, 240
 - on summary proceedings, 238 ; see *Addendum*, 279
- Courts of Justice, By Laws therein, 9
 - Baron, By Laws in, 56
 - Leet, ditto, 56, 68
- Custom authorizes By Laws, 55
 - trading, By Laws under, 57
 - extent of its operation, 58
 - confirmed by Statute, 59
 - not abrogated by By Law, 59
 - its effect as to By Laws restraining trade, 122
 - pleadings in By Laws depending on, 227
 - proof of, 255
- Damaging notices of By Laws, 195
- Definition of a By Law, 1
 - of a Public Lodging House, 31
 - of a Hackney Carriage, 37
- Departments of the State, By Laws by, 17
- Deposit of Plans, 26
 - see form of By Law in *Appendix*, 379
- Destruction of property, By Law as to, 92
- Diseased animals and cattle, By Law as to, 18
- Dispensing power in regard to By Laws, 86, 100
- Disqualification by reason of By Law, 198
- Distress, enforcing By Law by, 214
 - goods taken in, not to be sold, 215
- Divisibility of By Laws in reference to legality, 156
- Docks, By Laws for, 42
 - confirmation of, 167, 175
 - publication, 189
 - penalties on breach, 232

- Docks, By Laws for, proof of, 258
 - as to Gunpowder therein, 48
- Drainage of Buildings, form of By Law, see *Appendix*, 365
- Druggists, qualifications of, 50; see *Chemists*
- Drunkenness, By Law as to, 92
- Dust and Refuse, removal of, 24
 - see form of By Law in *Appendix*, 336
- Duties of officers, 19, 20
- Duty to make By Laws, 17, 31
- Earth closets, cleansing of, see By Law in *Appendix*, 335
 - erection of, in buildings, see *Appendix*, 369
- East India Company, By Law by, construed, 270
- Education Department, their practice as to confirmation, 179, 299
 - Forms of By Laws recommended by them, see *Appendix*, 297
- Education, Elementary, By Laws for, 50, 281
 - confirmation, 171, 178
 - publication, 193
 - penalties on breach, 236, 283
 - recovery of, 244, 283
 - construction of, 277
 - Form of By Law, see *Appendix*, 297
- Election, By Law as to the mode of, 112
- Electoral body, constitution of, 104
- Electors, By Laws as to their qualification, 103
- Eligibility of candidates, By Law as to, 107
- Emigrant Ships, see *Passengers' Act*
- Enforcing of the By Law, 197, 283
- Estoppels in actions on By Laws, 228
- Evidence as to proceedings on By Laws, 251
- Exempted buildings, 343
- Expenses of the Body, By Law as to, 116
 - of refreshments, 117
- Explosive substances, By Laws as to, 18, 45
 - confirmation of, 173, 183
 - publication of, 194
 - penalties on breach, 236
 - recovery of, 243
- Expulsion from Club or Society, 201

- Factories, Special Rules, 285
 - confirmation of, 175
 - publication of, 193
 - penalties on breach, 236
 - proof of, 259
- Fairs, By Laws as to, 28
 - confirmation of, 167, 176
 - publication of, 189, 195
 - penalties on breach, 232
 - recovery of, 243
- Filth, removal of, 24
 - form of By Law, see *Appendix*, 336
- Fines for non acceptance of office, 19, 89
- Fisheries, Salmon, By Laws as to, 51, 280
- Footways, cleansing of, 24
 - form of By Law, see *Appendix*, 335
- Forfeiture of goods for breach of By Law, 216
- Forms of By Laws, see *Appendix*, 289
- Foundations, By Law for, 26
 - form of By Law for, see *Appendix*, 346
- Framing of By Laws, 83
- Fraud, By Laws to prevent, 131
- General, By Law must be, 99
- General Law, By Law must be consistent with, 87
 - in addition to, 89
 - not to be in substitution of, 91
- Good government, By Law for, 19
- Guilds, By Laws in, 10
- Gunpowder, By Laws as to, 45
- Hackney Carriages, By Laws for, 36, 140
 - Plying for hire, 36, 261
 - Horses, 38
 - Mules and asses, 38
 - Suspension and revocation of Licence, 209
 - see form in *Appendix*, 315
 - breach of By Law, 261
- Harbours, By Laws for, 42
 - confirmation of, 167, 175, 181
 - publication of, 189

- Harbours, By Laws for, penalties on breach, 232
 - proof of, 256
 - Gunpowder in, 46
- Hop-pickers, By Laws as to, 35
 - confirmation, 173
 - see form in *Appendix*, 333
- Horses, Hackney, 38
- House refuse, By Law as to, see *Appendix*, 335
 - unfit for habitation, By Law as to, see *Appendix*, 376
- Implied authority for making By Laws, 7
- Imprisonment for breach of By Law, 210
- Indictment does not lie for breach of By Law, 249
- Industrial Societies, 279
- Infant Life Protection regulations, 49
 - striking keeper off the register, 210
 - recovery of penalties, 245
- Inhabitants, operation of By Law on, 68, 71
- Injunction in Chancery, remedy by, 248
- Inspection of Buildings, By Law as to, 26
 - see form in *Appendix*, 383
 - of lodging houses, 35
 - of Corporation books, 231
- Joint interest, By Law in cases, 68
- Joint Stock Companies, By Laws by, 19, 81
 - publication of, 187
- Jurisdiction, By Law to operate beyond, 156
- Justice, Courts of, By Laws by, 9
 - interested, 246
- Knackers' Yards, By Laws as to, 30
- Labouring men, Lodging houses provided for, By Laws in, 283
- Lands clauses consolidation, recovery of penalties under, 242
- Licence, enforcing By Law by suspension or revocation, 208, 209
 - of Slaughter House, 30
 - form of By Law, see *Appendix*, 395
- Limitation on Statutory power to make By Laws, 16
 - Statute of, when defence, 232
 - in summary proceedings, 239, 246
 - in the County Court, 240

- Literary and Scientific Associations, By Laws in, 11, 20, 80
 - confirmation, 171
 - penalties on breach, 235
- Local authority, making of By Laws by, 79, 283, 285
- Local Board, By Laws by, to regulate business, 19
 - regulations by, 20
- Local Government Board, their regulations as to the making of By Laws, 79, 405
 - confirmation by, 184
 - their model forms, see *Appendix*, 301
- Lodging Houses, Common, By Laws to regulate, 31
 - confirmation thereof, 169
 - penalties on breach, 232
 - see form in *Appendix*, 385
 - provided for labouring men, By Laws for, 283
 - ordinary, 31
- London, By Law for restraining trade in, 123
- Making of the By Law, 75
 - by part of the governing body, 76
 - by the majority, 76
 - to be recorded, 77
 - under Chapter, 77
 - under Statutes, 78, see *Addendum*, 279
 - proof thereof, 252, 258
- Manor Court, evidence of By Laws in, 257
 - construction of By Law in, 276
 - Lord of, to consent to By Laws for Commons, 279
- Markets, By Laws for, 28
 - see form in the *Appendix*, 326
 - confirmation of, 167
 - publication of, 189, 195
 - penalties on breach, 232
- Medical Professions, By Laws regarding, 11, 49
 - confirmation of, 170
- Metropolitan Commons, By Laws for, 41
 - breach of, 263
- Mines, rules and regulations for, 3, 81
 - duty to make them, 17
 - confirmation of, 174
 - publication of, 193

- Mines, rules and regulations for, penalties on breach, 236
 - recovery thereof, 243
 - proof of, 260
 - construction of 278
- Mortuaries, By Laws for, 39
- Mules, Hackney, By Laws for, 38
- Municipal Corporations, By Laws in, 18
 - confirmation, 162
 - publication of, 194
 - penalty on breach, 232
 - summary recovery of, 238
 - proof of, 259
 - breach of, 262
 - construction of their By Laws, 269, 270, 271, 272, 273, 276
- New building defined, 27
 - see form of By Laws relating therein in the *Appendix*, 346
 - Streets, see form in the *Appendix*, 344
- Notices of buildings and streets, By Laws as to, 26
 - see form in the *Appendix*, 379
 - of By Laws, see *Publication*
 - penalty for damaging, 195
- Nuisances, By Laws, to prevent, 135, 279
 - confirmation of, 163
 - construction of, 276
 - see form in the *Appendix*, 336
- Nurse Children, Protection of, 49
- Oath in By Laws, 201
- Offensive businesses, By Laws as to, 27
- Office, fine for refusal to accept, 19, 89, 114
- Officers, regulation of their duties, 113
- Order, By Law to preserve, 141
- Overcrowding of Streets, By Laws to prevent, 138
- Owners may make By Laws for Commons, 279
- Passenger ships, By Laws as to, 284
 - confirmation of, 168
 - publication of, 191
 - arrest for breach, 213

- Passenger ships, By Laws as to, penalties on breach, 235
 - recovery thereof, 242
 - proof of, 258
- Pavements, cleansing, 24
 - see form in the *Appendix*, 335
- Penal clause of By Law, 84
- Penalty, certainty as to, 97
 - mitigation of, 98
 - excessive, 154, 159
 - mode of enforcing By Law, 217
 - Statutory provisions as to, 231, 280, 283
 - recovery of, 237
 - to whom payable, 218
- Petroleum, By Laws as to, 18, 45
 - confirmation of, 168, 180
 - publication of, 194
 - penalties on breach, 237
 - recovery of, 243
- Piers, By Laws for, 42
 - confirmation of, 167, 175, 181
 - publication of, 189
 - penalties on breach, 237
 - recovery of, 243
 - proof of, 258
- Pilotage, By Laws for, 43
 - confirmation of, 170, 177, 181
 - publication of, 191
- Plans, deposit of, 26; see form in the *Appendix*, 379
- Pleadings in actions on By Laws, 225
- Pleasure Boats, By Laws for, 38
- Police in Towns, By Law, when a measure of, 141
 - see *Towns Police Act*
- Positive, By Law to be, 147
 - By Law, see *Appendix*, 335
- Practice of the Courts in actions, 229
- Preamble of the By Law, 84
- Prescription, By Law under, 1
- Privies in buildings, By Law as to, see *Appendix*, 372
- Privies, cleansing of, By Law, see *Appendix*, 335
- Privy Council, regulations by, 18, 289
- Professions, By Laws regarding admission, 11

- Professions, qualifications for, 49
- Properties of By Laws, 85
- Provident Societies, regulations of, 279
- Public Walks, By Laws for, 40
 - confirmation of, 171
 - arrest for breach, 214
- Publication of By Laws, 186, 284
 - its effect on strangers, 187
 - preliminary to validity, 195
 - proof of, 256
- Pulling down works, 204, 384
- Qualifications for professions, 49
 - of electors, 103
 - of candidates or members, 107
- Qualities of a By Law, 86
- Railway Commissioners, confirmation of their regulations, 173
- Railways, By Laws for, made by the Board of Trade, 18
 - by the Company, 20
 - see form in the *Appendix*, 289
 - confirmation of, 164
 - publication of, 188
 - arrest for breach, 211
 - penalties on breach, 233
 - recovery thereof, 242
 - evidence thereof, 257
 - of breach of, 265
 - construction of, 275
 - as to Gunpowder on, 47
- Reasonable, By Law must be, 101
 - when made under statutes, 142
 - under custom, 146
 - allegation as to, 228
- Recovery of penalty by Statute, 231, 237; see *Addendum*, 279
- Recreation Grounds, By Laws for, 40
 - confirmation, 171
 - arrest for breach, 214
- Refreshments, By Laws as to providing, 117
- Refuse nuisances, By Law as to, 29
 - see form in the *Appendix*, 336

- Registration of Slaughter Houses, 30
 - form of By Law as to, see *Appendix*, 400
 - of houses for nurse children, 49
- Regulation of Trade, 120
 - by Trading Companies, 128
- Removal of filth, dust, and refuse, By Laws as to, 24 ; see form in *Appendix*, 336
 - of substances, enforcing By Law by, 207
- Repeal of By Law, 60
- Rescinding of By Law, 62
- Restraint of Trade, 120
- Return of the By Law on the writ, 229
- Revocation of By Law by Statute, 63
 - by the authority, 61 ; see *Addendum*, 279
- Rubric of By Law, 84
- Rural Sanitary Authority, imposition of penalties by, for breach of By Laws, 235
- Sanitary purposes, By Laws for, 24
 - confirmation, 168, 176
 - publication, 191
 - penalties on breach, 234
 - recovery thereof, 236
 - proof of, 260
 - of breach, 264, 267
 - construction of, 274
- Salmon Fisheries, By Laws for, 51, 81, 280
 - confirmation, 172, 182
 - publication, 194
 - penalties on breach, 236
 - recovery thereof, 243
 - proof of, 260
- Secretary of State's power as to mines, 17, 174
 - to confirm or approve By Laws, 162, 167, 169, 172, 173, 279, 284, 285
- Scientific and Literary Associations, By Laws in, 11
 - confirmation, 171
 - penalties on breach, 235
- School, see *Education*.
 - Attendance Committee may make By Laws, 281
- Slaughter Houses, By Laws as to, 29

- Slaughter Houses, By Laws as to, penalties on breach, 233
 registration of, 30
 see form of By Laws in the *Appendix*, 395
- Snow, By Law for removal, 25
 see form in the *Appendix*, 336
- Spaces round buildings, 26 ; see form of By Law in the *Appendix*, 362
- Special case for opinion of Court, 247
- Special rules in Alkali Works, 54, 81, 286
 in Factories, 285
 in Mines, 55, 81
 construction of, 278
- Special Resolutions, 279
- Stannary Convocations, 58
- Statute authority for By Law, 15
 in Local Acts, 16
 in general Acts, 16, 279
 revocation of By Law by, 63
 provision therein as to making By Laws, 78
 penalties imposed by, 231
 recovered thereunder, 237
 as to the proof of By Laws, 254
- Steamboats, By Law as to, 273
- Stipendiary Magistrate, By Law as to his salary, 285
- Stoppages, 203
- Strangers, operation of By Law on, 66, 154
- Streets, By Laws as to laying out, 25
 see form in the *Appendix*, 344
- Summary recovery of penalties, 237 ; see *Addendum*, 279
- Surgeons, College of, By Laws by, 81
- Surrender of Charter, effect on By Law, 15
- Thames, River, By Laws for regulating, 53
 confirmation of, 171, 181
 publication of, 192
 proof of, 258
- Tolls, By Laws to provide for payment, 132
- Town, By Laws for regulating, 70
- Towns Police Act, By Laws under, 36
 penalties on breach, 233
 recovery of, 242
- Trade, regulation of, 120

- Trade, restraint of, 120
By Laws in Boroughs determined, 123
Board of, to confirm By Laws, 164
practice of the Department, 181
for forms supplied by, see *Appendix*, 289
- Trading By Laws by custom, 57
- Tramways, By Laws for, 21
for carriages and drivers thereon, 37
confirmation of, 166, 177
publication of, 177
penalties on breach, 233
recovery of, 242
proof of breach of By Law, 266
see form of By Laws in the *Appendix*, 294
- Ultra Vires*, By Law must not be, 148, 277
- Uncertainty, a defect in By Laws, 93
- Unfit habitations, By Laws as to, 26
form of By Laws, see *Appendix*, 376
- University of London, By Laws by, 81
- Upland Town, By Laws in, 57
- Usage will not set aside a By Law, 63
- Ventilation of buildings, By Laws as to, 26
see form of By Law in the *Appendix*, 362
- Voluntary association, mode of election in, 113
By Laws by, 131
- Walls, By Laws as to, see *Appendix*, 346
- Washhouses, By Laws for, 22
confirmation of, 166
publication of, 191
penalties on breach, 235
recovery thereof, 241
see form in the *Appendix*, 305
- Waterclosets in buildings, By Laws as to, see *Appendix*, 369
- Watermen, By Law as to, 272
- Wharves, Gunpowder on, By Laws as to, 48
- Workhouses, regulations for, how confirmed, 164

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